

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4 UNITED STATES OF AMERICA,

5 Plaintiff,

DOCKET NO. 1:20-mj-416

6 vs.

7 ADAM FOX, TY GARBIN,
8 KALEB FRANKS, DANIEL HARRIS,
9 BRANDON CASERTA,

10 Defendants.

11
12 TRANSCRIPT OF VOLUME II OF PRELIMINARY HEARING
13 BEFORE UNITED STATES MAGISTRATE JUDGE SALLY J. BERENS
14 GRAND RAPIDS, MICHIGAN
15 October 16, 2020
16

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18 Official Court Reporter
19 United States District Court
20 685 Federal Building
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Grand Rapids, Michigan 49503

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15 * * * * *

16 Grand Rapids, Michigan

17 October 16, 2020

18 10:06 a.m.

19 P R O C E E D I N G S

20 *THE COURT:* Good morning. We are back on the record
21 for a preliminary examination in this case. Or the
22 continuation of one.

23 Let's start with appearance of counsel.

24 *MR. KESSLER:* Good morning, Your Honor, Nils Kessler
25 for the United States.

THE COURT: Good morning.

MS. NIEUWENHUIS: And Helen Nieuwenhuis on behalf of
Mr. Fox, Your Honor. And seated at our table is also
Celia Sang who is an investigator with our office.

THE COURT: Good morning to both of you.

1 *MS. NIEUWENHUIS:* Good morning.

2 *MR. HILLS:* Michael Hills on behalf of Mr. Caserta
3 seated to my right.

4 *MR. SPRINGSTEAD:* Good morning, Your Honor,
5 Gary Springstead on behalf of Ty Garbin. Seated to my left is
6 Attorney Kathy Springstead from the same firm. And then seated
7 next to her is my cocounsel Mark Satawa who is seated next to
8 our client.

9 *THE COURT:* Good morning to all of you.

10 *MR. DOUGLAS:* Parker Douglas, Your Honor, here on
11 behalf of Daniel Harris who is seated to my right.

12 *THE COURT:* Good morning.

13 *MR. GRAHAM:* Good morning, Your Honor, Scott Graham
14 on behalf of Kaleb Franks seated next to me.

15 *THE COURT:* Good morning. As I said, this is the
16 continuation of the preliminary examination that we began on
17 Tuesday of this case. On Tuesday Defendants Fox and Garbin
18 asked for additional time both to prepare for the preliminary
19 examination and their bond hearings and I granted that request.
20 I think, unless there's something else we need to take up, we
21 are at the point where Ms. Nieuwenhuis is invited to begin
22 cross-examination.

23 Is there anything from counsel that we need to take
24 up first?

25 *MR. KESSLER:* Nothing additional from the government,

CROSS-EXAMINATION OF RICHARD J. TRASK BY MS. NIEUWENHUIS

1 Your Honor.

2 *THE COURT:* All right. Then, Agent Trask, if you
3 want to come forward, we'll swear you in again.

4 RICHARD J. TRASK

5 *(The oath was administered)*

6 *THE WITNESS:* I do.

7 *THE CLERK:* Please take the stand and state and spell
8 your name for the record.

9 *THE WITNESS:* My name is Special Agent Richard J.
10 Trask. Last name is T-R-A-S-K.

11 *MS. NIEUWENHUIS:* Your Honor, at this time I would
12 also make the 26.2 motion. I believe it's already been
13 complied with, but I did want to put that on the record.

14 *THE COURT:* Thank you. It's granted.

15 *CROSS-EXAMINATION*

16 *BY MS. NIEUWENHUIS:*

17 Q. Agent Trask, could you tell us a little bit about what you
18 knew in regard to Mr. Fox and his affiliations with any militia
19 groups?

20 A. As I understand it, Adam Fox used to be part of the
21 Michigan Home Guard and then had since left that group or was
22 removed from that group. And then upon meeting the
23 Wolverine Watchmen, I don't know that he was ever a member of
24 the group officially.

25 Q. Okay. And do you know the circumstances surrounding why

CROSS-EXAMINATION OF RICHARD J. TRASK BY MS. NIEUWENHUIS

1 he was no longer with the Home Guard Group?

2 A. I'm not aware of that at this time.

3 Q. Okay. And you said that you have not come to a conclusion
4 about whether or not he was actually a member of the Wolverine
5 group?

6 A. That is correct. At this time I'm not sure if he was
7 actually formally accepted into the group.

8 Q. Okay. And do you have any knowledge from this case
9 whether or not he was ever in the group referred to as
10 Boogaloo?

11 A. I don't have any knowledge of that.

12 Q. Okay. And what about the group known as the Michigan
13 Patriot Three Percenters?

14 A. I know he was associated with that group and according to
15 the Facebook page was listed as the leader or the president of
16 that group.

17 Q. Okay. And I don't want to go over all of the same issues
18 or things that were already discussed and testified to on
19 Monday, but I would like to talk a little bit about the
20 confidential source number 2.

21 Do you know, did you have conversations with that
22 confidential source?

23 A. I have not had personal conversations with that source.

24 Q. Okay. And so everything that you testified to is coming
25 basically secondhand to you from what he said?

CROSS-EXAMINATION OF RICHARD J. TRASK BY MS. NIEUWENHUIS

1 A. Through either audio or from the handling agents, yes.

2 Q. Okay. And in looking through the paperwork, this
3 confidential source number 2 was paid approximately how much
4 money, do you recall?

5 A. I don't recall at this time.

6 Q. Okay. And if I refreshed your memory a little bit from
7 your Complaint, does \$14,800 sound maybe in the ballpark?

8 A. That sounds correct.

9 Q. Okay. And do you know how that was divided up?

10 A. I'm not aware of the specific numbers. I know that
11 at least a bulk, if not more, was for expenses that came out of
12 their pocket.

13 Q. Okay. And was it also for reporting purposes?

14 A. I'm not aware of that.

15 Q. Okay. And do you recall whether or not in your Complaint
16 it's talked about that that might have been the division which
17 was between expenses and reporting?

18 A. Pardon? I'm not understanding your question.

19 Q. I said in your Complaint that was filed, I said do you
20 recall whether or not in your Complaint it made a -- it talks
21 about this \$14,800 and that it was for expenses and for
22 reporting?

23 A. I recall that. I don't think it lists a division between
24 the amounts.

25 Q. Okay. So it could be that he was paid more for reporting

CROSS-EXAMINATION OF RICHARD J. TRASK BY MS. NIEUWENHUIS

1 even maybe than expenses?

2 A. It's possible, but I don't know at this time.

3 Q. Okay. Can you say from your investigation up to this
4 point that CHS Number 2 really spent the majority of his time
5 with Mr. Fox as opposed to any of the other individuals that
6 have been charged in this conspiracy?

7 A. I would have to go back through the record to determine
8 the amount of time. I know CHS-2 spent a lot of time with all
9 the group members based on their position within the
10 organization or the group.

11 Q. Okay. But early on was Mr. Fox somebody that was actually
12 targeted and the source was, you know, basically told to hang
13 out and become friends with Mr. Fox?

14 A. I would not say targeted. CHS -- Mr. Fox was brought to
15 the attention, and that was somebody that CHS reported and
16 provided information on.

17 Q. Okay. And as soon as his name came through, it wasn't too
18 long after that that CHS Number 2 starts hanging around with
19 Mr. Fox. Is that a fair statement?

20 A. Once they became introduced, yes.

21 Q. Okay. And are you able -- do you recall who CHS-2's
22 direct supervisor is?

23 A. Um, CHS-2, we don't -- he has a handling agent, yes.

24 Q. Okay. And do you recall who that is?

25 A. Yes.

CROSS-EXAMINATION OF RICHARD J. TRASK BY MS. NIEUWENHUIS

1 Q. And who is that?

2 A. That would be Jason Chambers.

3 Q. Okay. And when CHS-2 would do something, make a
4 phone call, have contact with Mr. Fox, see something on one of
5 these chat sites, how is that actually documented?

6 A. It would be documented in a report to the case file.

7 Q. Okay. But if I were CHS Number 2 and say, you know, I get
8 up this morning and I'm like "Okay, I'm going to contact
9 Mr. Fox," is every single thing I do being documented by the
10 FBI if I'm working with the FBI?

11 A. I can't speak to that at this point. Different situations
12 have different circumstances.

13 Q. Okay. And you cannot speak to exactly how each
14 interaction with any of the group here in regard to this
15 conspiracy was actually documented then?

16 A. Based on -- I can only speak to the reports that I have
17 seen or that are in the case file.

18 Q. Okay. Do you have any idea about how many hours that
19 agent spent with Mr. Fox?

20 A. With Mr. Fox?

21 Q. Yes.

22 A. Um, are you talking about when -- after he was arrested or
23 when are you referring to?

24 Q. I'm actually speaking about during the time once Mr. Fox
25 becomes a person of interest we'll call him to the FBI and the

CROSS-EXAMINATION OF RICHARD J. TRASK BY MS. NIEUWENHUIS

1 agent CHS Number 2 is introduced to Mr. Fox, how many hours do
2 you think that agent actually -- or the source actually spent
3 with Mr. Fox?

4 THE COURT: I'm sorry, Ms. Nieuwenhuis, can you just
5 clarify that? Are you talking about the CHS or the handling
6 agent?

7 MS. NIEUWENHUIS: I'm sorry, the CHS.

8 THE COURT: All right.

9 THE WITNESS: I couldn't speculate, but I know it was
10 hundreds of hours probably.

11 Q. (BY MS. NIEUWENHUIS) Okay. Hundreds of hours. Okay.

12 Now, during the time that you are doing this
13 investigation, and if he's spending hundreds of hours with
14 Mr. Fox, do you learn some personal things about Mr. Fox?

15 A. As part of the investigation, yes.

16 Q. Okay. And part of that would have been that he stayed or
17 lived in that vac shop?

18 A. That's correct.

19 Q. Okay. And were you aware that he was living in the
20 basement with his two dogs?

21 A. That's correct.

22 Q. Okay. And so you knew that much about him at least --

23 A. Yes.

24 Q. -- correct?

25 Okay. And were you aware that Mr. Fox had some emotional

CROSS-EXAMINATION OF RICHARD J. TRASK BY MS. NIEUWENHUIS

1 issues?

2 A. I was not aware of any emotional issues.

3 Q. Okay. Were you aware that he had any anxiety issues?

4 A. I was not aware of that.

5 Q. Or that he ever had any mental health treatment or issues?

6 A. I cannot speak to that at this time.

7 Q. Okay. Do you know whether or not he had an emotional
8 support dog?

9 A. I am not aware of that.

10 Q. Do you know or was it reported to you that he heavily
11 smoked marijuana every day?

12 A. Not every day, but we knew that he did smoke marijuana,
13 yes.

14 Q. I'm assuming that you've listened to many, many hours of
15 these recordings to date, correct?

16 A. That's correct.

17 Q. Okay. And would you agree with me, not necessarily if
18 we're talking about the content, but that Mr. Fox is very
19 verbal? Is that a fair statement?

20 A. That would be a fair assessment.

21 Q. Okay. And that he kind of has a big mouth?

22 A. I would say he does enjoy talking quite a bit.

23 Q. Okay. And that he talks a lot about his theories or
24 beliefs?

25 A. That's correct.

CROSS-EXAMINATION OF RICHARD J. TRASK BY MS. NIEUWENHUIS

1 Q. Okay. And some of them are antigovernment?

2 A. Correct.

3 Q. Okay. And in your recordings that you've listened to --
4 and if you can't, you can't -- but I think your testimony on
5 Monday was that you did not feel the agent was pushing any sort
6 of an agenda or anything. Or at least that's not the vibe that
7 you got. Is that correct?

8 A. That is correct.

9 Q. And so you did not see things where the agent is
10 suggesting or encouraging or supporting something further than
11 just talk?

12 A. I can't recall anything at this time.

13 Q. Do you know whether or not the CHS-2 encouraged the group
14 to go to an encrypted website?

15 A. I am not aware of that.

16 Q. Do you know whose suggestion it was?

17 A. I don't know the first -- the first encrypted website,
18 whose suggestion that was.

19 Q. Okay. And that would have been Wire; am I correct?

20 A. Yes, that's correct.

21 Q. Okay. And you're unaware of who it was that encouraged
22 that?

23 A. I'm not aware.

24 Q. And I'm pretty certain that over your investigation you
25 certainly look into whether or not somebody has a criminal

CROSS-EXAMINATION OF RICHARD J. TRASK BY MS. NIEUWENHUIS

1 history, correct?

2 A. That's correct.

3 Q. Okay. And Mr. Fox, for all intents and purposes, did not
4 have a prior criminal history, correct?

5 A. Not that I can recall offhand.

6 Q. Okay. And the items that we saw when you testified on
7 Monday in conjunction with Mr. Fox, those were all legal items
8 as far as you know?

9 A. The -- are you referring to the weapons?

10 Q. Yes.

11 A. That is correct.

12 Q. Okay. Do you recall in these recordings, particularly
13 Mr. Fox with his concern about the unrest, the civil unrest
14 that might happen around election time -- do you recall that?

15 A. I do recall him making statements regarding that.

16 Q. Okay. And that he had made some statements in regard to
17 what he might do in response to that?

18 A. I don't recall specific statements he made in response to
19 that civil unrest.

20 Q. Okay. Do you recall him saying anything about, you know,
21 gonna pack up his stuff and be ready to go and all of these
22 things in conjunction with that statement?

23 A. I recall him making statements, but I don't recall them
24 being in connection with the upcoming civil unrest.

25 Q. Okay. Now, I would like to talk about one particular

CROSS-EXAMINATION OF RICHARD J. TRASK BY MS. NIEUWENHUIS

1 incident which was August 23 of 2020. And this is the
2 incident, it's number 24 in your Complaint, but it talks about
3 a meeting that had taken place up by Lake Orion, Michigan?

4 A. Yes, ma'am.

5 Q. Do you recall that?

6 A. Yes.

7 Q. Okay. And do you recall that in fact Mr. Fox was not
8 present during that meeting? Is that correct?

9 A. That's correct.

10 Q. Okay. And from looking at the Complaint it talks about
11 some things that CHS-2 is referring to allegedly what --
12 Mr. Fox's beliefs or what he was saying. Do you recall that?

13 A. I don't recall that right offhand.

14 Q. Okay. And excuse my language, Your Honor, but it says
15 "CHS-2," referring to Fox, "stated 'He is all about fuckin'
16 killing her.'" Do you recall that?

17 A. I do recall that.

18 Q. Okay. And then later on it's talked about and it says
19 "CHS-2 explained that was why Fox wanted to do recon for the
20 plan." Right?

21 A. Correct.

22 Q. Okay. And that's not Mr. Fox saying that, that is
23 actually CHS-2, correct?

24 A. I believe that was CHS-2's recollection of the events,
25 yes.

1 Q. Okay. And that's maybe his recollection, but that's what
2 he's claiming at this meeting that that's what Mr. Fox is
3 saying, correct?

4 A. I would have to look back at my notes or the transcript
5 from that.

6 Q. Okay. Just so we're all clear, Mr. Fox is not present
7 during the time that these statements are made and being
8 attributed to Mr. Fox?

9 A. I can't recall if it was that date that there was the
10 phone call afterwards and there was a conversation.

11 Q. Okay. There might have been a phone call afterwards, but
12 my question is is at that meeting -- was Mr. Fox at that
13 meeting saying these things?

14 A. Mr. Fox was not at the meeting.

15 MS. NIEUWENHUIS: Okay. Then I don't have any
16 further questions. Thank you.

17 THE COURT: Mr. Springstead.

18 MS. NIEUWENHUIS: Oh, Your Honor, could I ask one
19 more? I'm sorry. I did mean to ask that.

20 THE COURT: Of course.

21 Q. (BY MS. NIEUWENHUIS) And what is your interpretation of
22 that word "recon" that you have in quotations in the Complaint?

23 A. A reconnaissance with military or law enforcement
24 background would be to conduct some sort of surveillance
25 planning for a mission that is upcoming.

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 Q. Okay. Like a surveillance maybe to the governor's house
2 or . . .

3 A. That would be correct, yes.

4 MS. NIEUWENHUIS: Okay. I have nothing further,
5 Your Honor. Thank you.

6 THE COURT: Thank you.

7 CROSS-EXAMINATION

8 BY MR. SPRINGSTEAD:

9 Q. Good morning, Agent Trask. My name is Gary Springstead.
10 I represent Ty Garbin.

11 And I want to start by clarifying some of the testimony
12 that we heard earlier in the week on Tuesday, if I could.

13 A. Okay.

14 Q. So during your direct testimony Mr. Kessler was asking you
15 when the FBI became involved in investigating this, right?

16 A. Correct.

17 Q. And you told him in response that the FBI had been
18 investigating this prior to being tipped off to it by CHS-2,
19 right?

20 A. That -- we became aware of a plot, not specifically this
21 portion of it, but yes.

22 Q. And how did you become aware of that plot without the
23 informant?

24 A. It was -- my understanding is it was through another
25 division.

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 Q. Okay. So do you know how they became aware of it?

2 A. I'm not aware.

3 Q. Do you know if it was through human sources? Again,
4 informants that are in these groups that notified them?

5 A. I'm not aware of the specific details on how they became
6 aware of it at that time.

7 Q. At some point there was some mention of the FBI monitoring
8 these groups on their social media and online. Did that occur
9 in this case?

10 A. As part of the investigation, yes.

11 Q. Did it occur prior to that?

12 A. I cannot speak to that, but I'm not aware of that.

13 Q. Okay. So you, at least your division and what you were
14 doing, you weren't monitoring these groups online?

15 A. Only as part of the investigation. I can only speak to
16 that.

17 Q. Okay. So when we talk about Mr. Garbin specifically, you
18 said that he was part of the leadership of the
19 Wolverine Watchmen; is that right?

20 A. He was, from my understanding, placed into a leadership
21 role within the group, yes.

22 Q. And the Wolverine -- to be clear, the Wolverine Watchmen
23 was just a Facebook group, right?

24 A. They were designated militia based on their Facebook group
25 and -- so yes.

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 Q. So the government designated them militia. They didn't
2 designate themselves militia, right?

3 A. I did not designate them militia, so . . .

4 Q. Well, I didn't say you did, but did the government? Is
5 that why you're saying that?

6 A. I am not aware of that.

7 Q. Well, did they call themselves militia?

8 A. I would have to review their Facebook page and the
9 information that they had out there.

10 Q. Okay. And in fact the Wolverine Watchmen existed prior to
11 Mr. Garbin's joining that Facebook group, right?

12 A. I don't know the exact timeline of his joining that group.

13 Q. Okay. That would be something that you would want to know
14 in terms of determining whether he's part of the leadership or
15 actively involved in it, right?

16 A. As far as when he joined?

17 Q. Correct.

18 A. Yes, it would be.

19 Q. And as -- was it -- did you -- during your investigation
20 did you learn that he had been named an admin on the Facebook
21 group?

22 A. I'm not aware of that.

23 Q. Okay. Do you know if that's why he was deemed to be,
24 quote, leadership?

25 A. I am not aware of that.

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 Q. If it was that fact, would you agree that simply being an
2 admin or somebody that monitors the group doesn't necessarily
3 mean that you're a leader?

4 A. Again, I can't speculate on his position based on what
5 you're stating at this point.

6 Q. Okay. Let's -- we talked a lot about the sources. You
7 had two citizen sort of informants, right? CHS-1 and 2?

8 A. That's correct.

9 Q. And then through CHS-2 you introduced two undercover FBI
10 agents, right?

11 A. I believe one was introduced through CHS-2.

12 Q. Okay. How was -- and that would have been Red, right?

13 A. That's correct.

14 Q. And how was Mike [sic] introduced to this group?

15 A. I am not aware of the exact details on how that UC was
16 introduced.

17 Q. Okay. Did it predate -- did his involvement with the
18 group predate your investigation into this alleged plot?

19 A. I came onto the investigation shortly before Mark was
20 introduced.

21 Q. Okay. So -- and was he based in Ohio as opposed to
22 Michigan?

23 A. No.

24 Q. He was a Michigan agent that was undercover in the
25 Michigan group?

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 A. Mark was the -- his backstory was he was based in
2 Michigan.

3 Q. Okay. So with respect to these CHS-1 and 2, every time
4 that they went to the group, after they had become cooperating
5 witnesses for the government, did they record their
6 conversations? Did they always -- were they always equipped
7 with a wire or a recording device when they went to these
8 meetings?

9 A. I cannot speak to -- excuse me. I cannot speak to every
10 meeting on whether that occurred.

11 Q. Okay. Well, you must know as the alleged plot developed
12 or as you guys started to follow it a lot more closely, at that
13 point did they start always having a recording device on them?

14 A. I cannot speak to the term "always." The intent or the
15 plan was to always have that, however, there are circumstances
16 that may dictate otherwise.

17 Q. I understand that. There's practical realities of it.
18 But let's say, for instance, on September 12th and 13th when
19 the group was in Luther at Mr. Garbin's property, would CHS-2
20 have had a recording device on him at that point?

21 A. Yes.

22 Q. And how long would that recording device work? Did it
23 have a time limit on it or anything?

24 A. I'm not familiar with those details.

25 Q. Do you know whether it was only activated by voice so that

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 it could work at a longer -- over a longer period of time?

2 A. I have not seen the recording devices, so I'm not aware of
3 the details of that.

4 Q. Do you know if the recording also included video or did it
5 simply record audio?

6 A. I'm not aware of that.

7 Q. That would be something pretty important to know, wouldn't
8 it?

9 A. Again, I know that I've listened to some of the audio from
10 that. I know that it was recorded. I cannot speak to if there
11 was video also recorded on those same devices.

12 Q. Okay. We know that CHS-2 at times recorded with video,
13 right?

14 A. That's correct.

15 Q. But you're just saying you don't know whether he was able
16 to record video all the time or whether he was equipped with
17 video recording all the time?

18 A. I don't know if the device he had that weekend would have
19 had video on it. I'm not aware of that.

20 Q. Okay. So if you had video -- if he did record video, then
21 if somebody said -- you know, if Mr. Fox or somebody else said,
22 you know, "Are you -- everybody is in? Are we all down with
23 this plot to kidnap the governor?" and somebody shook their
24 head no, that would be captured on video, right?

25 A. Potentially if the camera was pointing at that individual.

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 Q. Right. And it may not be reflected on an audio recording,
2 right?

3 A. Speculating, yes, that would be correct.

4 Q. And do you know whether the undercover agents were
5 recording with audio or video or both when they were there that
6 weekend?

7 A. I know of at least audio. I'm not aware of the video.

8 Q. Okay. And were the sources and the undercovers equipped
9 with a transmitter as well to transmit the conversations off to
10 other agents or surveillance groups that were listening nearby?

11 A. I was not in attendance up in that area at that time, so I
12 can't speak to if that was the case.

13 Q. Well, do you know whether that -- you just don't know
14 whether they had transmitters on them as well?

15 A. I do not know that.

16 Q. Okay. If they did have transmitters, would that have been
17 also recorded at a separate location as kind of Bureau
18 practice?

19 A. It's recorded on the device, and when we have used
20 transmitters, it's not, that I'm aware of, recorded at a
21 separate location as well.

22 Q. Okay. Now, when this -- since you had undercover agents
23 involved in this case, I assume that there's additional steps
24 that are taken at the FBI to approve an undercover operation,
25 right?

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 A. That's correct.

2 Q. It's not as if you can just declare that you're conducting
3 an undercover operation on your own. You need supervisor
4 approval at least, right?

5 A. Correct.

6 Q. And then it probably even goes to a headquarters level,
7 right?

8 A. That's correct.

9 Q. And FBI headquarters would then meet with the Department
10 of Justice and review the plan and the objectives, right?

11 A. That would be correct, yes.

12 Q. Do you know when that occurred?

13 A. I don't. I was not part of that procedure.

14 Q. Okay. And do you know if that -- during that procedure
15 when this undercover plan was presented how many plots it
16 included?

17 A. I am not aware of that.

18 Q. Because there were a number of plots that were bandied
19 about, right?

20 A. In regard to -- are you referencing earlier conversations
21 or . . .

22 Q. Yes.

23 A. Okay. Yes, there were.

24 Q. Okay. So -- and to name a few, there was a plot to
25 firebomb police vehicles, right?

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1 A. That's correct.

2 Q. And that never came to fruition, right?

3 A. That was part of the plot. It was not a separate plot.

4 It was part of this plot.

5 Q. Okay. Does that -- is that the same thing as the MSP
6 attacks that they were talking about, or was that related to
7 the Capitol?

8 A. I don't recall offhand.

9 Q. Okay. You testified on Tuesday that there was a plot to
10 remove the governor of Virginia, right?

11 A. That was brought up as a possible scenario, yes.

12 Q. Okay. And the idea there, what you specifically said, was
13 that they would kidnap them and remove him from his seat,
14 right?

15 A. Specifically they mentioned those two governors, yes.

16 Q. Okay. And that didn't happen?

17 A. That's correct.

18 Q. There was also talk among the various people that are
19 charged here -- not my client -- about just opening the door
20 and shooting the governor, right?

21 A. That's correct.

22 Q. That didn't happen?

23 A. That's correct.

24 Q. And there was talk of maybe putting on a disguise as a
25 pizza man and going to the door and then presumably shooting

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 the person, like the federal judge, right?

2 A. That's correct.

3 Q. And that didn't happen?

4 A. Correct.

5 Q. And there was a plot where they discussed just shooting
6 the governor's house, right?

7 A. Correct.

8 Q. Were you aware of the conversation where they talked about
9 going to Home Depot and recruiting people there looking for
10 work just to go vandalize the governor's house?

11 A. I'm not familiar with that conversation.

12 Q. Okay. And then when we even get -- so there's a variety
13 of ideas that are being thrown out there, from storming the
14 Capitol, right?

15 A. Correct.

16 Q. To shooting the governor, kidnapping the governor of
17 Virginia, right?

18 A. Correct.

19 Q. Vandalizing the house, right?

20 A. Correct.

21 Q. And then there's a number of different ideas that are
22 being thrown out as to what to do if they were to kidnap the
23 governor of Michigan, right?

24 A. That's correct.

25 Q. They talked about one person, I think it was Mr. Fox I

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1 think you testified to, said that they were going to take the
2 governor and put her in a boat in Lake Michigan, right?

3 A. That's correct.

4 Q. That -- did you have any evidence that that plot was ever
5 acted upon?

6 A. It was not.

7 Q. And they also talked about maybe taking Governor Whitmer
8 to another state, right?

9 A. That's correct.

10 Q. Several states in fact.

11 A. That is correct.

12 Q. One in Wisconsin where they might try her for treason,
13 right?

14 A. Correct.

15 Q. And then talk of taking her to other states where they
16 presumably -- do you know what they would do in those other
17 states?

18 A. I do not know.

19 Q. So when we're talking about these various ideas that are
20 being bandied about, what evidence do you have that Mr. Garbin
21 actually agreed to participate in this plot to kidnap the
22 governor and then what were they going to do with her?

23 A. I can only speak to what I filed in my Complaint and the
24 knowledge that I have of this messaging.

25 Q. Well, in your Complaint you accused him of conspiring with

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1 the other defendants that are here and Mr. Croft of trying to
2 kidnap the governor. Of conspiring to do that. Right?

3 A. That's correct.

4 Q. And so I'm asking you, what evidence did you base that
5 decision on that Mr. Garbin had actually agreed with these
6 other people to do that?

7 A. Again, I can only speak to what's in my Complaint, and
8 I've laid that out in there.

9 Q. Okay. And I'm asking you to testify to that right now,
10 what it was specifically.

11 A. And that information has already been placed on the
12 record. I've already spoken about that. That Complaint.

13 Q. Okay. And what was that specifically that Mr. Garbin in
14 his role --

15 MR. KESSLER: Your Honor, it seems like the same
16 question over and over. He's asking him to recite from memory
17 everything that's in the Complaint. I'm not sure that's
18 reasonable.

19 THE COURT: Do you want him to read the Complaint? I
20 mean, he can go through each day and --

21 MR. SPRINGSTEAD: No, I would like him to actually
22 answer the question instead of referring me to the Complaint.
23 It's a fair question. Because assuming he answers the
24 question, then I have follow-up questions for him about that.

25 THE COURT: All right. But he's already testified to

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 the facts that he believes supports the probable cause, so if
2 you have specific questions about those facts, I think you can
3 ask those.

4 MR. SPRINGSTEAD: Okay. I'll get into the specifics
5 of it.

6 Q. (BY MR. SPRINGSTEAD) So one thing that was alleged in the
7 Complaint was that surveillance was conducted of the governor's
8 vacation property, right?

9 A. That is correct.

10 Q. Now, there was a first surveillance that was conducted,
11 right?

12 A. Correct.

13 Q. And that was not conducted by Mr. Garbin?

14 A. Correct.

15 Q. And in fact CHS-2 invited Mr. Garbin, called him and said,
16 "Hey, we're gonna go do that recon. Do you want to go? I'm in
17 the area." And Mr. Garbin said no, right?

18 A. I don't recall the specific conversation.

19 Q. It would be a pretty important conversation to keep track
20 of, wouldn't it?

21 A. There are a number of conversations, and it's a lot to
22 review, but yes.

23 Q. I agree. A lot of information for you to review, but also
24 an important detail in an investigation if in fact Mr. Garbin
25 was asked, invited, and declined, right?

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 A. I can't speculate without seeing that conversation.

2 Q. Okay. But what we do know is that he didn't go?

3 A. That is correct.

4 Q. And then we also know that Mr. Garbin was recorded with a
5 group of people talking about the kidnapping, and he said,
6 "We're not kidnapping anybody," or something to that effect,
7 right?

8 A. That was the first part of the conversation, yes.

9 Q. And then he also indicated that he was not interested at
10 all in storming the Capitol.

11 A. Correct.

12 Q. And the second time that there was a surveillance that was
13 conducted of the governor's lake house, Mr. Garbin was present
14 for that, right?

15 A. That's correct.

16 Q. But do you know whether Mr. Fox ever told him what he was
17 going to be doing prior to leaving?

18 A. I don't know the specific conversation prior.

19 Q. Okay. Do you know that Mr. Fox left Mr. Garbin's
20 property, said that he was going to go do something, and then
21 left the property in Luther with another person?

22 A. I am not aware of that situation.

23 Q. Okay. Were you aware that Mr. Harris then asked
24 Mr. Garbin "Do you want to go for a ride and get something to
25 eat?"

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 A. I'm not aware of that conversation.

2 Q. Did you know that they then went to Big Rapids and ate
3 dinner at the Holiday Inn?

4 A. I'm not aware of that conversation.

5 Q. Are you aware that that's where they went?

6 A. I'm not aware of that.

7 Q. The undercover agents never told you that?

8 A. Again, there's a lot of information to review, and I'm not
9 aware of that situation.

10 Q. Okay. So I believe you testified that you were aware of
11 who was in what car when they traveled up to Governor Whitmer's
12 lake house, right?

13 A. That's correct.

14 Q. And Mr. Garbin wasn't driving his own car, right?

15 A. Correct.

16 Q. In fact, it was another unidentified individual from
17 Wisconsin?

18 A. Correct.

19 Q. And the CHS-2 told you -- or at least told the FBI, I
20 don't know if he told you specifically -- that everybody was
21 armed when they went up there?

22 A. That is the information we received, yes.

23 Q. And do you know -- were you ever able to corroborate that?

24 A. I was not specifically, no.

25 Q. You don't know whether that's true or not, do you?

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 A. I do not.

2 Q. In fact, Mr. Fox told -- when he was interviewed --
3 indicated that he wasn't armed during that surveillance, right?

4 A. That's correct.

5 Q. And you just don't know whether anybody else was actually
6 armed; is that right?

7 A. I have no way to confirm that.

8 Q. And that's even though you had an undercover human source
9 in the car along with an undercover, right? Undercover agent?

10 A. I cannot speak to what they saw at that time. I'm not
11 aware of that information, so . . .

12 Q. Okay. Now, do you know that Mr. Fox had to provide
13 Mr. Garbin with the address to the governor's house?

14 A. I'm aware they had conversations of the address, yes.

15 Q. And that would seem to indicate that Mr. Garbin didn't
16 have it before he left his residence, right? Or his property
17 in Luther.

18 A. I can't speculate to what Mr. Garbin had prior to that.

19 Q. Well, there would be no need to give it to him later if he
20 already had it, right?

21 A. If I forget an address and have to ask somebody for an
22 address, that does not insinuate that I do not have that
23 address. It's only that I do not have it at that time. So I
24 cannot speak to that.

25 Q. Okay. What we do know is that Mr. Fox later when they all

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1 sort of met up in a Wal-Mart parking lot provided Mr. Garbin
2 with the address, right?

3 A. That is incorrect.

4 Q. That's incorrect? Who actually provided the address?

5 A. I know at one point on the video Mr. Fox provides the
6 address to Mr. Garbin over the phone.

7 Q. Okay. Okay. Yeah. Sorry. Maybe not at the parking lot,
8 right?

9 A. That's correct.

10 Q. Okay. And we also know that they never found the address
11 that night, right?

12 A. That's incorrect.

13 Q. They -- I thought you said that they were in the vicinity
14 of it but not that they actually located the residence.

15 A. I did not say that.

16 Q. Okay. Do you know that -- are you saying that's not true?

17 A. That is not true. They did locate the residence.

18 Q. Okay. And did you ever download Mr. Garbin's phone to
19 find out whether he actually put in a GPS direction for the
20 correct address?

21 A. We do not have a review of Mr. Garbin's phone at this
22 time.

23 Q. Okay. So you don't know whether he actually drove up to
24 it or whether he simply had to go by a map?

25 A. The vehicle that he was in had a recording device which

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1 had the GPS address on it and it places him right at the end of
2 the drive. In addition to audio recording or the video of
3 stating they located it.

4 Q. Okay. And you've reviewed that video and audio?

5 A. I have.

6 Q. Okay. And where is that?

7 A. Pardon?

8 Q. Is that in ELSUR in Detroit?

9 A. I believe so.

10 Q. Okay. Now, going back to -- do you know who -- the person
11 that drove Mr. Garbin and Kaleb Franks to the property that
12 night?

13 A. Yes, I do.

14 Q. I'm not asking you necessarily to tell us who it is at
15 this point, but is it -- they all returned back to Mr. Garbin's
16 property that night, right?

17 A. That's my understanding, yes.

18 Q. And spent the night?

19 A. That's correct.

20 Q. And I think you testified at the beginning of this
21 Mr. Kessler sort of walked you through the security measures
22 that they were allegedly taking, right? By changing chat
23 groups? Right?

24 A. That's correct.

25 Q. And that they were supposedly going to limit themselves to

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1 just that group, just the group that was allegedly going to
2 kidnap somebody. The governor, I guess. Right?

3 A. They agreed to limit it to a small core group, that's
4 correct.

5 Q. Okay. Now, do you have any idea how many people were at
6 Mr. Garbin's that night?

7 A. I don't know that number.

8 Q. It was more than just a small group, wasn't it?

9 A. That's correct.

10 Q. And in fact rather than keep tight controls over it,
11 Mr. Garbin didn't even do the inviting, did he?

12 A. I'm not sure who did the inviting to that.

13 Q. Would it surprise you to find out that CHS-2 was the one
14 that did the inviting?

15 A. It would not surprise me to find out that multiple
16 individuals invited others.

17 Q. And it wouldn't surprise you because CHS-2 is the one that
18 invited the undercover agents, or at least one agent, to come
19 up that night, right?

20 A. Are you asking me if that surprises me?

21 Q. No. I'm just saying that's a fact, right, that CHS-2
22 introduced the -- Red that night?

23 A. I believe that is the case, yes.

24 Q. And that would seem to indicate that he at least was doing
25 the inviting?

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 A. He at least invited Red, that is correct.

2 Q. Okay. And rather than being limited to the small group
3 that you mentioned earlier, it's actually quite a big group
4 that's at this property, right?

5 A. The small group you are referring to is in the chat
6 groups. You're referring now to an FTX which is a completely
7 separate situation.

8 Q. Okay. But there is no effort to limit this plot to this
9 small group, right? It's being discussed at Mr. Garbin's
10 property the next morning.

11 A. Again, I think that's speculation at this point, because,
12 again, the core group was a small chat group. You're alluding
13 to a larger group that was at an FTX. I can't speak to if
14 there were smaller groups or how that played out at that point.

15 Q. Well, didn't -- wasn't there somebody that next morning
16 after the second surveillance who said, "Okay," something to
17 the effect of, you know, "are we all in on -- to do this
18 kidnapping or what?" Didn't somebody say that?

19 A. And as you explained earlier, without video I cannot
20 speculate who was all in that area at the time.

21 Q. That's not my question. My question is did somebody say
22 something to that effect the next morning?

23 A. That's correct.

24 Q. They did, right?

25 A. That is correct.

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 Q. Do you know who said that?

2 A. I don't recall offhand.

3 Q. Okay. It wasn't my client, right? Mr. Garbin?

4 A. I don't believe so.

5 Q. And at that point the unidentified person from Wisconsin
6 said, "I'm not okay with that. I'm out." Right?

7 A. That's -- there were two individuals from Wisconsin, and
8 the one you're referring to did not say that that morning.

9 Q. Okay. But somebody from Wisconsin said that, right?

10 A. That is correct.

11 Q. And then the gentleman from Wisconsin that drove with them
12 on that surveillance, drove his truck there, he eventually said
13 "I'm out"?

14 A. That was after returning to Wisconsin.

15 Q. Right. He said, "I'm out," and he was out?

16 A. That is the way the events played out, yes.

17 Q. And that's presumably why you didn't charge him in your
18 Complaint, right?

19 A. Correct.

20 Q. So at least up until that point somebody was able to
21 withdraw from this alleged conspiracy and not be charged in
22 your Complaint?

23 A. That's correct.

24 Q. And Mr. Garbin could do the same thing at that point,
25 right?

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 A. Speculating, yes.

2 Q. Do you know whether you have a recording of him telling
3 CHS-2 that he needed to stop Mr. Fox because this was crazy and
4 stupid?

5 A. I spoke with the handling agents last night and they are
6 not aware of any recording that has that statement on it.

7 Q. Okay. Do you know if they pulled the recording to listen
8 to it?

9 A. I know over the course of this investigation that they
10 have listened to at least a majority of the audio and they are
11 not aware of that.

12 Q. Okay. My question is did they -- after you advised them
13 of that, did they go and listen to it again, do you know?

14 A. I do not know that.

15 Q. Do you know if they went and asked CHS-2 if that was the
16 case?

17 A. I do not know that.

18 Q. How many of these posts, inflammatory posts in these chat
19 rooms went unresponded to?

20 A. I cannot even wager a guess.

21 Q. I mean, it's pretty common for somebody to come in there,
22 spout off, maybe some antigovernment rhetoric, and then just
23 have people -- it's crickets, right? People are ignoring him?

24 A. Again, I can't even speculate on that.

25 Q. Do you know that that occurred?

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 A. Yes, it has.

2 Q. Okay. And just because somebody doesn't say anything in
3 that respect in response doesn't necessarily mean they agree
4 with the original poster, right?

5 A. I -- I can't speculate whether they agree with something
6 just because they don't respond.

7 Q. Right. They could, they could agree, they might not
8 agree, or they might be somewhere in between, right?

9 A. It's possible, yes.

10 Q. And by the same token when the alleged conspirators, not
11 my client, say something like, "Okay, well" -- like Musico, for
12 instance, says, "Well, you know, you have to be in or otherwise
13 leave." That doesn't necessarily mean that the people that
14 stayed are in, right?

15 A. It does mean that they are at least aware of it and that
16 they are staying to hear what is going on, that's correct.

17 Q. Right. But your job as an FBI agent in this circumstance
18 is to try and determine each person's state of mind in a
19 general sense, right?

20 A. It's to determine their intentions, yes.

21 Q. Yeah. And so it's not an easy job to do. You have these
22 people that are in militia-type groups who want to play with
23 guns and run around in the woods and do stuff and all of that
24 might be perfectly legal, right?

25 A. Correct.

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 Q. And on the other hand, there may be people who actually
2 are going to take action and harm somebody.

3 A. Correct.

4 Q. And it's sort of the FBI's job and your job to try and
5 sort those people out, right?

6 A. That's correct.

7 Q. And one of the ways of doing that is trying to determine
8 whether they actually agree to go forward with that action, if
9 somebody proposes the action, right?

10 A. Yes, to determine their intent in following through, yes.

11 Q. Okay. So what evidence do you have that Mr. Garbin
12 actually intended to go through with this and didn't just think
13 "This is dumb, stupid, and it's never going to come to fruition
14 whether I do anything or not"?

15 A. Again, you're asking me the same question you asked
16 earlier regarding me explaining what is in my Complaint.

17 Q. So you don't have any other evidence outside of what's in
18 your Complaint to suggest that?

19 A. I did not say that.

20 Q. Okay. Do you have any other evidence outside of the
21 Complaint?

22 A. I can't speak to that at this time.

23 Q. You don't know of any?

24 A. There is a lot of information to review. I have not
25 personally reviewed all that information.

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 Q. Mr. Musico openly talked about "Everybody has got to be in
2 for this plot or leave," right?

3 A. Yes, during that conversation, correct.

4 Q. But he wasn't charged in your federal Complaint with being
5 a part of this plot to kidnap, was he?

6 A. No, he was not.

7 Q. And so simply being there and even talking about it is not
8 enough. Do we agree?

9 A. I would leave that up to the attorneys to make that
10 decision.

11 Q. Okay. Now, there's a lot of things that -- what the
12 Wolverine Watchmen or somebody like Mr. Garbin who is
13 interested in training in firearms can do that is perfectly
14 legal, right? The other attorney sort of touched on this, but
15 it's not illegal to go and train with firearms, right?

16 A. That's correct.

17 Q. And it's not illegal to learn how to do combat shooting?

18 A. Correct.

19 Q. And it's not illegal to learn how to take care of wounds
20 or do field medicine or anything like that?

21 A. That's correct.

22 Q. And there's nothing wrong or illegal with having a go bag,
23 right?

24 A. That's correct.

25 Q. And you testified previously that there wouldn't be any

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 reason for sport for somebody to learn how to clear a house and
2 do a tactical entry, right?

3 A. I believe my testimony was that would not be a common
4 occurrence.

5 Q. Okay. Have you heard of the sport of paintball?

6 A. I have.

7 Q. And you would want to learn how to do those types of
8 things in paintball, right?

9 A. Comparing paintball and firearms training is -- are two
10 completely separate situations.

11 Q. But the same tactics would apply, wouldn't they?

12 A. I could shoot you with a paintball, but I could not shoot
13 you with a live round. So the tactics could apply, however,
14 they are two completely separate situations.

15 Q. Okay. Well, I went to the FBI academy a long time ago,
16 20 years ago, at Quantico, Virginia. Did you -- did you go
17 through the academy as well?

18 A. Yes, I did.

19 Q. And at the academy they had this thing called
20 Hogan's Alley. Did you have that?

21 A. That's correct.

22 Q. And did you learn how to clear rooms and make breach
23 entries using paint guns?

24 A. Yes, but they are different than the paintball guns that
25 you are speaking of.

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 Q. But you were taught the same tactics and principles using
2 a paint gun?

3 A. That's correct.

4 Q. Excuse me. So, again, when we're talking about simply
5 being a part of this group, not everybody even in the
6 Wolverine Watchmen was charged, right?

7 A. Correct.

8 Q. And so that in and of itself is not a crime. It's free
9 speech, right?

10 A. Being part of the Wolverine Watchmen?

11 Q. Yeah. And being part of these groups and talking about
12 whatever you want to say about the government.

13 A. That's correct.

14 Q. Okay. Let's move on to -- you discussed a little bit
15 about these improvised explosive devices or IEDs you called
16 them, right?

17 A. Correct.

18 Q. And was it Barry Croft, was he the only one or the one
19 that initiated this discussion of filling up the balloons?

20 A. I don't know who initiated the discussion.

21 Q. Okay. Because it seems to me there was two separate
22 instances that we're talking about. One was at an FTX earlier
23 on where there was two attempts and they were both duds.

24 A. That's correct.

25 Q. Do you remember that? And then there was also one that

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1 occurred at or near Mr. Garbin's property, right?

2 A. That's correct.

3 Q. And that was done by Mr. Croft, right?

4 A. Yes.

5 Q. And did you become aware at any time that Mr. Garbin told
6 Mr. Croft under no circumstances would he be allowed to explode
7 anything at his property?

8 A. I'm not aware of that conversation.

9 Q. Did the FBI then go and execute a search warrant at
10 Mr. Garbin's property in Luther?

11 A. That's correct.

12 Q. And did you find the site where those -- where whatever he
13 made was exploded?

14 A. That is what I'm told, yes.

15 Q. And was that explosion, did that actually take place on
16 state land, not Mr. Garbin's property?

17 A. I'm not aware of anybody measuring that or doing an
18 assessment on that property at this time.

19 Q. Okay. So that's still a possibility then, right?

20 A. I can't speculate.

21 Q. It's still possible?

22 A. Again, it's possible, but I'm not aware of it.

23 Q. Okay. Did the FBI search that shed at Mr. Garbin's
24 property in Luther?

25 A. I believe so. I was not at that property.

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 Q. Okay. Do you know if they recovered the fireworks that
2 Mr. Croft used?

3 A. I'm -- I have not seen the list of items recovered at this
4 time.

5 Q. Okay. At any point did you -- or did you learn through
6 your investigation that Mr. Garbin locked up Mr. Croft's
7 chemistry set or his fireworks in his shed?

8 A. I'm not aware of that at this time.

9 Q. Okay. When the FBI arrived at his property, were the
10 silhouettes that were allegedly damaged through the shrapnel,
11 were those still in place on the trees?

12 A. I'm being told that there were some still there.

13 Q. Okay. And some were taken down?

14 A. I'm not aware if any were taken down.

15 Q. Okay. And I believe -- correct me if I'm wrong -- but I
16 believe on the morning after the second surveillance at
17 Mr. Garbin's property that there was a discussion with Red or
18 with the group, among the group, about whether they could
19 afford to buy some explosives, right?

20 A. The discussion was on the cost of the explosives.

21 Q. Okay.

22 A. On how much it would cost.

23 Q. And at some point did the group discuss or were people,
24 members that were present there, were they asked to chip in for
25 the cost of the explosives?

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 A. I don't recall the exact conversation, but they were not
2 asked to provide money at that specific time.

3 Q. Right. But they were asked whether they were willing to,
4 right?

5 A. I don't recall the exact conversation.

6 Q. Okay. If you listened to the recording, was the
7 human -- well, if you know, was the human source 2, was he
8 there at that point?

9 A. I would have to look back through the details, but I
10 believe so.

11 Q. And was Red there?

12 A. I believe so, because they were having the discussion with
13 the costs.

14 Q. Okay. So between those two government agents, so to
15 speak, one of them would have recorded that conversation
16 presumably, right?

17 A. I can't speak to what -- that's a hypothetical question.
18 I assume it would happen, but I can't speak to confirm that.

19 Q. Okay. I mean, it's certainly something that you would
20 want to record, right?

21 A. Agreed, yes.

22 Q. I mean, you've got an undercover agent there who is
23 introduced to sell explosives, you would want to know who is
24 okay with that, who agrees with that part of the plot, right?

25 A. Agreed. But again, as we discussed earlier, I can't speak

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 to a hundred percent of the time.

2 Q. Okay. Did you ever bother to check and see whether
3 Mr. Garbin specifically said, "I'm not going to contribute
4 anything toward that because I'm broke"?

5 A. I have not heard that conversation.

6 Q. Okay. And then I assume that -- do you know his finances,
7 whether he actually was broke at that point?

8 A. I'm not aware of Mr. Garbin's finances.

9 Q. He had a -- do you know that he had a full-time job?

10 A. Again, I'm not aware of that at this time.

11 Q. You don't know anything about his employment?

12 A. Mr. Garbin was not my case to handle.

13 Q. Okay. There was some discussion, I'm guessing by Mr. Fox,
14 about a need to do this by the election; is that right?

15 A. There were multiple references to the election, yes.

16 Q. And why would there be a need to kidnap Governor Whitmer
17 at the election? She's not even running at that point.

18 MR. KESSLER: Calls for speculation, Your Honor.

19 THE COURT: Sustained.

20 MR. SPRINGSTEAD: I'm asking him if he knows.

21 THE COURT: If you know.

22 THE WITNESS: I can't speculate on that.

23 Q. (BY MR. SPRINGSTEAD) Do you know whether -- I guess we
24 can just take judicial notice of the fact that she's not up for
25 re-election, right?

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 A. Pardon?

2 Q. She's not up for re-election on the 3rd, right?

3 A. Not that I'm aware of.

4 Q. Okay. So that deadline that was being talked about on
5 multiple occasions, that could have related to some other plot,
6 right?

7 A. They reference the election. I'm not aware of specific to
8 who they were speaking of at that time.

9 Q. Could it have related to the governor in Virginia?

10 A. It could have related to the president.

11 Q. Okay. And were they -- do you know whether the defendants
12 in this case, the accused in this case, were they supportive of
13 the president's comments about this? About liberate Michigan?
14 Did that ever come up in your investigation?

15 A. Throughout the investigation I'm not aware of comments one
16 way or another.

17 Q. You never heard that President Trump tweeted "Liberate
18 Michigan," "Liberate Virginia"?

19 A. I have heard that of the president, but as far as what
20 you're asking, I cannot speculate on their thoughts on those
21 comments.

22 Q. Okay. So you didn't have any indication that that was
23 what prompted them to act in this case?

24 A. I believe this discussion of this occurred before those
25 comments.

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 Q. Okay. I'm just trying to figure out why you referenced
2 the election of the president. The presidential election on
3 the 3rd.

4 A. Because that is the election date of the president on
5 November 3rd.

6 Q. Okay.

7 A. And as you said yourself, Governor Whitmer is not up for
8 election.

9 Q. So the inference being that maybe it had something to do
10 with the presidential election as opposed to Governor Whitmer's
11 election?

12 A. Again, speculating at this point.

13 Q. Okay. You testified -- and I'm not trying to put words in
14 your mouth -- but Mr. Kessler showed you a picture of a -- what
15 you described as a short-barreled rifle with a silencer on it
16 that allegedly belonged to Mr. Garbin, right?

17 A. Correct.

18 Q. And subsequent search of his house found that firearm that
19 was shown in that -- depicted in that picture, right?

20 A. I have not seen the list of items seized at the house.

21 Q. Okay. But you testified -- well, let me just ask you
22 directly: Did you ever run the serial number associated with
23 that firearm to see what in fact it was?

24 A. I have not specifically run that.

25 Q. Would it surprise you to learn that it's a pistol and not

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 a sawed-off rifle?

2 A. Again, I'm not -- I'm only basing it off of the picture
3 that I saw.

4 Q. Okay. So is it fair to say that you don't know whether
5 it's actually a sawed-off rifle?

6 A. I have not seen the weapon specifically in person to
7 inspect it at this time.

8 Q. Okay. So did you get out ahead of yourself a little bit
9 by saying that it was an illegal rifle then?

10 A. I believe the question was whether that would have been a
11 legal rifle if it was in fact a short barrel, and if that is
12 the case, yes, it would be an illegal. Since it was
13 registered.

14 Q. So then if it's a pistol, then it wouldn't be necessarily
15 illegal, right?

16 A. I cannot speak to the ATF rules on that, but my
17 understanding is that would be correct.

18 Q. Okay. And did you ever -- we discussed the silencer that
19 was on it along with another silencer that Mr. Garbin had in
20 his possession. Did you ever check to see whether he had
21 actually applied to the ATF to get the appropriate paperwork to
22 lawfully possess that?

23 A. I have not. I believe that has been done, though.

24 Q. You believe it has been submitted?

25 A. I believe a check was done with ATF, but I'm not -- I

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 cannot speak to it.

2 Q. Okay. You don't know?

3 A. I have not seen it.

4 Q. And did you check to see whether that weapon was actually
5 registered with the local police department and the
6 State Police or whatever he's required to do under state law?

7 A. I believe that would have been done by the case agent
8 handling Ty Garbin's case, but I have not done that.

9 Q. Okay. And the -- I think you testified that maybe there
10 were three silencers that were found at Mr. Garbin's house?

11 A. I believe that was the information that was provided to me
12 from another agent, but I cannot confirm that.

13 Q. Okay. Do you know whether or not one of those three
14 belonged to Kaleb?

15 A. I'm not aware of that information.

16 Q. You didn't check?

17 A. Again, I have not run those checks. I'm not the case
18 agent on Ty Garbin's case, so I'm not aware. And I have not
19 seen the evidence list of items that were taken from
20 Ty Garbin's property.

21 Q. Okay. Let me ask you a slightly different question. Did
22 you -- is there any problem with Mr. Garbin securing Kaleb's
23 firearm for him in his gun safe?

24 A. I would have to review ATF rules on that to see if that is
25 an issue.

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 MR. KESSLER: Your Honor, I'm just going to object on
2 relevance. We've been going for a long time about guns and
3 silencers and nobody is charged with any firearms offenses at
4 this point.

5 THE COURT: Mr. Springstead.

6 MR. SPRINGSTEAD: Well, you know, the government
7 brought it up and suggested that he was in possession of an
8 illegal weapon, so I think it's fair for me to try and --

9 THE COURT: But we're on the prelim right now which
10 is the question of kidnapping or the conspiracy to commit
11 kidnapping, so let's try and steer it back towards relevancy.

12 MR. SPRINGSTEAD: Okay. Fair enough. I'm just going
13 to check and see if I have . . .

14 Q. (BY MR. SPRINGSTEAD) On August 9th Mr. Fox is --
15 allegedly said that that was when the kidnapping plot came up.
16 Do you recall that?

17 A. I would have to look back through the notes or the
18 Complaint to recall that date or what that conversation was.

19 Q. Okay. And on that date there was no affirmative statement
20 by Mr. Garbin that he was in support and that he was in on that
21 plot?

22 A. Again, I would have to look back through the notes and the
23 Complaint on that information.

24 Q. Okay. And just touching a little bit on the use of the
25 encrypted chats, there's nothing illegal about that, right?

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 A. That's correct.

2 Q. And you said that -- I think that one of the defendants
3 said that one of the benefits of that, of using one of these
4 services, might be that law enforcement wouldn't be able to
5 find it. They could delete it and be gone, right?

6 A. That was actually a direct statement from one of the chats
7 from one of the defendants.

8 Q. Okay. And you've served a lot of subpoenas on different
9 Telecom providers like phones, phone companies, Verizon,
10 AT & T, Facebook, things like that, right?

11 A. Historically, yes.

12 Q. And are you aware that they are legally required to store
13 data for a certain period of time, either six months, for just
14 that reason, so that federal law enforcement can actually
15 access that type of thing?

16 A. The telephone subscribers are not able to store
17 information on encrypted chats.

18 Q. But they are required to back up their servers and
19 databases so that if they are asked by the FBI, they can
20 provide whatever requested information that they have access
21 to, right?

22 A. You're talking about two different things. They are
23 required to do that for text messages and stuff that are on
24 their service, however, that is an application that is
25 downloaded and it's encrypted. They do not have access to

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 that.

2 Q. Okay. Did you ever seize any of the defendant's phones?

3 A. Subsequent to arrest, yes.

4 Q. Okay. And I assume that you guys -- that the FBI did some
5 sort of forensic analysis on those phones or at least is
6 beginning to?

7 A. Um, I don't know if it's been started at this time, but it
8 is in the works.

9 Q. And it's pretty difficult to actually destroy any
10 electronic evidence on devices, isn't it?

11 A. It depends on what you're speaking to.

12 Q. Well, for chat messages, texts, Facebook posts, pictures,
13 videos, things like that, it's not easy to get rid of those, is
14 it?

15 A. So if you're speaking to wire-encrypted communications,
16 that is stored on their server, it's not stored on the phone
17 itself, so being able to destroy that where the server is
18 housed in an overseas location, we don't have access to that.
19 It is easy to not allow us access to that information.

20 Q. Okay. That wasn't my question. I didn't say anything
21 about encrypted communications. I said it's not easy to
22 destroy a lot of that other information, right?

23 A. The basic information on the phone, that's correct.

24 Q. And in fact you guys were being provided with relatively
25 realtime information from insiders, right?

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 A. That's correct.

2 Q. And do you know whether any steps were taken in these chat
3 rooms for people to distance themselves from certain defendants
4 or other people in those groups?

5 A. I would have to look back through all the chats.

6 Q. Okay. Now, I'm just about out of questions, I think.

7 Another plot that was discussed that you testified about
8 was just sending a bomb, right?

9 A. That was one idea that was brought up, yes.

10 Q. And not -- that's not something that my client brought up,
11 right?

12 A. No, I believe that was a different individual.

13 Q. And, you know, somebody also discussed sending out
14 multiple cupcakes or something like that. Some multiple --
15 mail out a bunch of different bombs to disrupt society, I
16 guess, right?

17 A. Yes.

18 Q. Again, nothing that Mr. Garbin did or agreed to do or
19 expressed any interest in, right?

20 A. I can say he did not state that, that's correct.

21 Q. And when Mr. Garbin was arrested, did CHS-2 tell them --
22 was he the one that kind of set that up, to meet at that
23 location?

24 A. I don't know the series of events that preempted a meeting
25 at that location.

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 Q. But they were told -- kind of lured to that location
2 because Red was going to be passing by, right?

3 A. That's correct.

4 Q. And Red would have some free gear that had been left
5 behind at firing ranges, right?

6 A. That was one of the portions of it, yes.

7 Q. Okay. And so we don't know whether Mr. Garbin went for
8 that free gear or whether he went to hopefully put a
9 down payment on those explosives with Red, right?

10 A. I would have to go back through the messages leading up to
11 that.

12 Q. But there was at least two different reasons why somebody
13 might go to that?

14 A. The main reason being the explosives situation, but yes,
15 there was also talk of receiving gear.

16 Q. Well, I understand why the FBI and why you would regard
17 that as the main reason, but you don't know what Mr. Garbin was
18 thinking, do you?

19 A. Again, I would have to go back through the messages to see
20 what Mr. Garbin said.

21 Q. Well, we know, don't we, that he didn't actually
22 contribute any money toward an explosive device?

23 A. I'm not aware of what Mr. Garbin had on him when he was
24 arrested.

25 Q. Okay. Did you know that he was smoking?

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 A. I'm not aware of the details regarding Mr. Garbin when he
2 was arrested.

3 Q. Okay. Why -- what was the significance of that day? Why
4 were they arrested on that day as opposed to letting it unfold
5 and go further?

6 A. A potential compromise to the CHS at that time.

7 Q. To -- I'm sorry?

8 A. To the CHS at that time.

9 Q. Okay. So he had sort of run his course and was beginning
10 to get like he might be identified or outed, is that it?

11 A. There was a potential compromise.

12 Q. Okay. Now, just to kind of put all this in perspective,
13 these -- and I'm going to speak generally -- people that are
14 interested in militia or involved in militia-type activities,
15 they can have a wide range of ideological viewpoints, right?

16 A. That's correct.

17 Q. So you could have Libertarian type of viewpoints that you
18 just want the government to leave you alone so you can do your
19 own thing, play guns in the woods, right?

20 A. There could be a variety of viewpoints, that's correct.

21 Q. And is it fair to say that there was a variety of
22 viewpoints among the defendants about their ideology?

23 A. From the information I've seen, there was a variety, yes.

24 Q. Okay. And do you know whether Mr. Garbin's was sort of a
25 laissez fair Libertarianism, in other words, "I don't have to do

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 a lot because I think the government is going to collapse of
2 its own weight"? Did you ever come across that statement?

3 A. I have not. I don't recall that -- those statements.

4 Q. Did he say that in the context of why he didn't need to
5 storm the Capitol?

6 A. I don't recall that specific statement.

7 Q. Okay. But that would be one possibility, is that somebody
8 might feel like they don't have to do anything because the
9 government is ineffective and it's going to collapse on its own
10 without doing anything, right?

11 MR. KESSLER: Objection, Your Honor. He's asking him
12 to speculate as to what's in the defendant's mind and why.

13 THE COURT: Mr. Springstead.

14 MR. SPRINGSTEAD: I'll just move on. I'll withdraw
15 the question.

16 THE COURT: All right.

17 Q. (BY MR. SPRINGSTEAD) And just to make sure that I mention
18 this, Mr. Garbin actually had at least one legal stamp that you
19 know of for the silencer that was found at his house, right?

20 A. I believe that's correct.

21 Q. And he doesn't have any felonies or any other convictions
22 that would prohibit him from possessing any of those firearms,
23 right?

24 A. I have not seen his report recently, so I'm not aware of
25 anything.

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 Q. Now, the -- you testified that the informants said that
2 they wanted to be very careful not to spread their identities
3 outside the group. Is that CHS-2 that said that?

4 A. I specifically think that was in the chat message you're
5 referring to where they said no public contact, no putting our
6 identities out there.

7 Q. Okay. But they did go to -- some of them went to a
8 Capitol rally, right?

9 A. That was prior to those statements.

10 Q. And then they went to Wisconsin for an FTX up there?

11 A. Prior to those statements.

12 Q. And they went to Ohio for an FTX?

13 A. It was prior to those statements.

14 Q. Okay. And we know that on the 12th and 13th more than
15 just the people that are here in this courtroom and charged in
16 this case were present at his property, right?

17 A. That's correct.

18 Q. Okay. And so it's not as if they were hiding out. They
19 were out in public with other people and they weren't being
20 that careful about their identities, were they?

21 A. So you're discussing a statement by them that was what
22 they stated in the chat messages, and then, yes, they did have
23 other individuals at that, but it was not a public environment
24 because the public was not invited to attend that FTX as would
25 have been the Lansing rally.

CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD

1 Q. And you talked about some other aspects of operational
2 security, about that I think Mr. Fox made them put their phones
3 upstairs when they went down in the basement; is that right?

4 A. That's correct.

5 Q. Do you know whether they actually verified that people did
6 that?

7 A. I believe visually they all put a phone down, however, I
8 know at least the CHS had a second device on him.

9 Q. And would it surprise you that Mr. Garbin didn't do that
10 and nobody cared?

11 A. I can't speculate that it would surprise me or . . .

12 Q. Okay. Now, you also introduced or testified about
13 Mr. Garbin's response to some emojis. Do you remember that? A
14 wave and a police officer or something like that?

15 A. That was Mr. Garbin's statements. That was not his
16 response.

17 Q. Okay. So we're talking about the same text message,
18 right, where they are talking about the bridge and the source
19 texted them a picture or those emojis, right, to Mr. Garbin and
20 the group?

21 THE COURT: Mr. Springstead, which exhibit are you
22 referring to?

23 MR. KESSLER: Exhibit 16, Your Honor.

24 MR. SPRINGSTEAD: Thanks, Nils.

25 THE COURT: Thank you.

~~CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD~~

1 Q. (BY MR. SPRINGSTEAD) Do you recall that exhibit, 16?

2 A. I recall the message, but I would have to see it to
3 understand what you're asking.

4 MR. GRAHAM: Your Honor, I have one question
5 triggered by the further cross-examination.

6 THE COURT: All right.

7 RECROSS-EXAMINATION

8 BY MR. GRAHAM:

9 Q. Agent, when the arrests of four of the defendants occurred
10 when they were going to meet with Red, I want to call your
11 attention to that, how much money was seized from them total?

12 A. I don't have the total number at this time.

13 Q. Okay. Do you have the number for any individual
14 defendant?

15 A. The only one I can speak to it is Adam Fox because I
16 conducted that interview.

17 Q. How much did he have?

18 A. \$275.

19 Q. Thank you.

20 CROSS-EXAMINATION CONTINUED

21 BY MR. SPRINGSTEAD:

22 Q. Okay. Does this -- can you see that up there, or does
23 that refresh your recollection about the emojis that we're
24 talking about?

25 A. Yes, I'm familiar with that.

~~CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD~~

1 Q. Okay. And did you review the text messages above that?

2 A. I have not.

3 Q. So you don't know whether somebody else, namely, CHS-2,
4 texted the Borat video and he shared it and agreed with it?

5 A. I would assume based on this. You can see that CHS-2 is
6 on the right there texting the messages.

7 Q. That he's writing and texting?

8 A. Yeah, I would assume that.

9 Q. Okay. And so when Mr. Garbin responds to the CHS, it's
10 actually CHS-2 that sends the emojis and he responds to it,
11 right?

12 A. You're speaking about two different emoji conversations.
13 The emojis that you're referring to were -- I'm not sure where
14 in this conversation were.

15 Q. Okay. And so these aren't -- are these part of the
16 same -- these two exhibits, are they part of the same
17 conversation?

18 A. Yes, I believe so.

19 Q. Okay. And the exhibits where he says X the water, that
20 would block the water, right? Or the wave?

21 A. The insinuation would be stop the wave.

22 Q. Yeah. And so -- or it also could mean, couldn't it, that
23 if the bridge goes down, then there will be water there?

24 A. I guess you could say that.

25 Q. And do you know whether CHS-2 was the one that sent those

~~CROSS-EXAMINATION OF RICHARD J. TRASK BY MR. SPRINGSTEAD~~

1 emojis first?

2 A. I would have to see the entire text string, but based on
3 the timestamps, it would appear that CHS-2 made the first
4 comment, that's correct.

5 Q. Okay. Okay. And going back to Mr. Garbin's role, alleged
6 role as leadership in the militia group, you can't say what
7 qualified him as, quote, leadership in the government's eyes?

8 A. I don't say that we designated him as a leader, and I
9 don't think I've said that.

10 Q. So that's not your position or the FBI's position?

11 A. I cannot speak to the FBI. I'm saying based on the facts,
12 I do not believe we placed him in that position. I believe
13 that was his own organization placed him in a leadership role
14 within that.

15 Q. Okay. And going back to the date of arrest, I think you
16 said -- you testified that you don't know whether Mr. Garbin
17 had any money in his possession at that time?

18 A. I'm not aware of what he had in his possession.

19 Q. It would be a pretty important thing to know, right? If
20 they were going to go put a down payment on explosives,
21 wouldn't you want to know whether somebody actually had money
22 to put down on it?

23 A. Again, that day there were a lot of evidence items that
24 were collected. I'm not aware of all the evidence, and
25 specifically I don't know specifically what he had on his

REDIRECT EXAMINATION OF RICHARD J. TRASK BY MR. KESSLER

1 person at that time.

2 Q. Okay.

3 MR. SPRINGSTEAD: That's all I have, Your Honor.

4 THE COURT: Thank you.

5 Mr. Kessler, how long do you have for redirect?

6 MR. KESSLER: Five minutes.

7 THE COURT: Okay. Let's go forward with that.

8 REDIRECT EXAMINATION

9 BY MR. KESSLER:

10 Q. Agent Trask, I'll just start with one question that
11 Ms. Nieuwenhuis asked you about, about whether CHS was pushing
12 the defendants here or any -- Mr. Fox in particular towards
13 this scheme.

14 Let me take you back to June 6th, the meeting in Dublin,
15 Ohio. Isn't it true that Mr. Croft and Mr. Fox were talking
16 about kidnapping the governor there before they ever met CHS-2?

17 A. That's correct.

18 Q. So it was through somebody else that you learned about
19 that, right?

20 A. That's correct.

21 Q. Okay. And let me address some of Mr. Springstead's
22 questions. He mentioned the Hogan's Alley training center that
23 both you and he apparently attended at Quantico. When you in
24 law enforcement and the FBI are trained to shoot at
25 Hogan's Alley, that's to do your job as law enforcement,

REDIRECT EXAMINATION OF RICHARD J. TRASK BY MR. KESSLER

1 correct?

2 A. That is correct.

3 Q. You might actually have to shoot human beings in the
4 course of your work, right?

5 A. That's correct.

6 Q. Something you take seriously?

7 A. Absolutely.

8 Q. If these people breached a house and started shooting
9 people or blew them up with an improvised explosive device,
10 that wouldn't be their job, would it?

11 A. That's correct, it would not.

12 Q. It wouldn't be a sport either, like paintball I think was
13 referred to a lot of times.

14 A. That's correct.

15 Q. Okay. We talked about the surveillance the night of
16 September 12th and 13th. Three cars went up there, correct?

17 A. Correct.

18 Q. Car number 2 had Mr. Garbin, Mr. Franks, and a person
19 we've been talking to up until now as an individual from
20 Wisconsin?

21 A. That's correct.

22 Q. That's a person by the name of Brian Higgins, correct?

23 A. Correct.

24 Q. And you know that because he was arrested yesterday,
25 right?

REDIRECT EXAMINATION OF RICHARD J. TRASK BY MR. KESSLER

1 A. Yes.

2 Q. Well, actually you knew his name before, but it's out in
3 the open now. He was arrested and charged by the state
4 yesterday, correct?

5 A. That's correct.

6 Q. You referred to a recording that showed that they were
7 actually there?

8 A. Yes.

9 Q. That was not an FBI recording inside. There was no FBI
10 informant in that car, right?

11 A. No, there was not.

12 Q. The recording came from a dash camera, didn't it?

13 A. That's correct.

14 Q. And who put that there?

15 A. That would be Brian Higgins' personal dash cam.

16 Q. So it was his car and his dash cam, right?

17 A. That's correct.

18 Q. And the reason you know about that -- tell the Court how
19 you know about what's on that dash cam video.

20 A. After the surveillance Brian Higgins provided a copy to
21 CHS-2, told CHS-2 that he was providing it for their use. He
22 was destroying his copy. And then that was the end of the
23 conversation.

24 Q. Okay. So you have a copy of that, and it shows that they
25 actually went to the governor's house, right?

REDIRECT EXAMINATION OF RICHARD J. TRASK BY MR. KESSLER

1 A. That's correct.

2 Q. And you can actually see inside the car as well, right?

3 A. That's correct.

4 Q. So we know that Mr. Garbin and Mr. Franks were in the car
5 with Mr. Higgins?

6 A. That is correct.

7 Q. And after Mr. Higgins was arrested yesterday he was
8 interviewed by the FBI, correct?

9 A. Correct.

10 Q. And he made a point of saying he had destroyed that video,
11 right?

12 A. Yes, he did.

13 Q. Did he also do anything else to indicate that he was
14 worried about law enforcement finding that video?

15 A. Yes, he indicated that he wanted to get the video back
16 from the CHS.

17 Q. In Michigan?

18 A. Yes.

19 Q. Okay. Mr. Springstead also asked you about the meeting
20 where Mr. Musico told everyone "If you're not down for
21 kidnapping, you should leave," right?

22 A. Yes.

23 Q. Okay. And these gentlemen did not leave, right?
24 Including his client, Mr. Garbin. He stayed?

25 A. That's correct.

REDIRECT EXAMINATION OF RICHARD J. TRASK BY MR. KESSLER

1 Q. Okay. And I believe you were asked if -- why Mr. Musico
2 wasn't charged. Mr. Musico didn't show up on September 12th or
3 13th for this whole nighttime surveillance, did he?

4 A. That's correct.

5 Q. He hasn't been involved in this particular plot, has he?

6 A. That's correct.

7 Q. And he was not the only one not involved. You were asked
8 about whether Mr. Garbin actually said he was out. You do know
9 about somebody who did say he was out, right, Mr. Higgins?

10 A. That's correct.

11 Q. He said he wanted nothing to do with this?

12 A. Yes.

13 Q. And another individual who was charged by the state, so we
14 now know his identity, is a person by the name Daniel Molitor,
15 right?

16 A. That's correct.

17 Q. And Daniel Molitor was in one of these cars doing the
18 surveillance, right?

19 A. Yes, on the first surveillance.

20 Q. And he also withdrew, didn't he?

21 A. That's correct.

22 Q. Which is why he's not in the Complaint.

23 A. Correct.

24 Q. And when he talked to some of these gentlemen on the
25 encrypted chat messages, what did he say he didn't want?

RECROSS-EXAMINATION OF RICHARD J. TRASK BY MR. GRAHAM

1 A. I would have to recall that conversation.

2 Q. Did he say something about going to jail?

3 A. That's correct.

4 Q. So he said he didn't want to go to jail, right?

5 A. Correct.

6 Q. Mr. Garbin didn't say that. He kept meeting with
7 everyone, didn't he?

8 A. Not that I'm aware of.

9 Q. What -- not that you're aware of. You're not aware of him
10 saying he wanted out?

11 A. I have nothing to say that he stated he wanted out.

12 *MR. KESSLER:* I have nothing further, Your Honor.

13 *THE COURT:* All right. We will do a brief recross
14 but only as relates to what Mr. Kessler just put on the record.

15 *MR. GRAHAM:* Absolutely.

16 *RECROSS-EXAMINATION*

17 *BY MR. GRAHAM:*

18 Q. I have a question that relates to a specific point that
19 Mr. Kessler just asked you about, which is when Musico made the
20 statement about if you're not -- essentially if you're not up
21 for kidnapping, leave. That happened at Munith, right?

22 A. I would have to look back through the dates, but I believe
23 that's correct.

24 Q. Okay. And in fact Mr. Franks did leave, didn't he?

25 A. Again, I would have to look back through the notes, but I

1 know at one point Mr. Franks did leave. I would have to look
2 back through the series of events.

3 Q. If it happened, if the statement was made by Musico at
4 this first Munith gathering, you're aware then Mr. Franks left?

5 A. At that time Mr. Franks did.

6 Q. Thank you.

7 *THE COURT:* Mr. Douglas, do you have anything else?
8 Again, narrowly related to --

9 *MR. DOUGLAS:* Yes.

10 *RE CROSS-EXAMINATION*

11 *BY MR. DOUGLAS:*

12 Q. And Mr. Harris was not at Munith; isn't that correct?

13 A. I would have to look through the notes to recall if he was
14 there or not.

15 Q. But you don't recall that right now?

16 A. There were a number of meetings. I don't recall that
17 specific who was there.

18 Q. Okay.

19 *THE COURT:* And over here, Mr. Hills?

20 *MR. HILLS:* I don't have anything, Your Honor. Thank
21 you.

22 *THE COURT:* Mr. Springstead.

23 *MR. SPRINGSTEAD:* Nothing further, Your Honor.

24 *THE COURT:* And Ms. Nieuwenhuis.

25 *MS. NIEUWENHUIS:* No, thank you, Your Honor.

1 *THE COURT:* All right. In that case we will take
2 about a 10-minute break, and then we'll come back and I'll hear
3 argument on probable cause.

4 *THE CLERK:* All rise, please. Court is in recess.

5 *(Recess taken at 11:41 a.m.)*

6 *(Back on the record at 11:59 a.m.)*

7 *THE COURT:* All right. We're back on the record to
8 hear argument as to the preliminary hearing.

9 Mr. Kessler, you have the burden, so you can go
10 first.

11 *MR. KESSLER:* Thank you, Your Honor.

12 Your Honor, I would submit that there is probable
13 cause to bind these gentlemen all over for trial. What we have
14 here -- although there's been a lot of digressions and
15 discussion about firearms and about other things -- what we
16 have here is a conspiracy to commit kidnapping which consists
17 of an agreement they have to have joined voluntarily and
18 at least one person in that agreement has to have committed one
19 overt act. I submit we have a lot more than that, but that's
20 all we need to establish to have probable cause here.

21 So taking the agreement first, we've heard some
22 discussion about that there were other things that they might
23 have talked about doing like storming the Capitol or like
24 sending out bombs or whatever. Those are ideas that they might
25 have discussed, but those were not the plot.

1 The idea that they have talked about, and we've heard
2 plenty of evidence about it, is they have talked about
3 kidnapping the governor here. Now, we also have to take a look
4 at what overt acts they have committed or that somebody in this
5 conspiracy has committed towards accomplishing that. They
6 don't have to have gotten all the way to where they were almost
7 there to do it. That would be an attempted kidnapping. But
8 they do have to have done something, as people have -- as we
9 all agree here -- to indicate that they had the intent to
10 follow through. No one of those things all by itself
11 establishes it.

12 And I believe we've heard a lot of argument here
13 saying this or that or the other thing is not by itself enough.
14 For example, it is legal to own assault weapons and shoot them.
15 Sure it is. But when we take all these things together in the
16 totality of the circumstances, it paints a very different
17 picture.

18 So we have a number of individuals here. All of them
19 here were training for combat. It can be portrayed as a sport,
20 but I think portraying it as something as innocent as paintball
21 is just completely at odds with the facts that we have here.

22 And we heard the testimony of Agent Trask that while
23 some of these self-designated militia groups do things like
24 this, they train with firearms and they train for combat-type
25 scenarios, this was out of the ordinary. This is something

1 nonstandard even within his experience. Where they are
2 training for things like breaching a house, they are using
3 improvised explosive devices, they are doing assaulting cars
4 and ex-filtration from cars and whatever you want to call it.
5 This is a lot of nonstandard stuff that raised some flags.

6 I think another thing that we have to look at as far
7 their overt acts that's very indicative of their intent is all
8 of what they are calling op sec or operational security. I
9 would focus your attention in particular on Exhibit 10 which is
10 a long text message encrypted chat that they all participated
11 in. The one where they were calling themselves the Bonfire
12 Group. And they were freaking out because somebody in the
13 group had left something behind when they moved that made law
14 enforcement wonder what they were up to. They started
15 wondering if they had been infiltrated by the feds. Did they
16 think they had a mole in their organization. And they were all
17 talking about how they needed to tighten up their operational
18 security, only meet in person from then on. And they actually
19 got together at one of the defendants' houses to meet in person
20 and bring three forms of ID, including things like
21 Social Security, other kinds of documents you would use to get
22 a passport almost to prove that they were really who they said
23 they were and they weren't feds.

24 And then we had them change at the insistence of one
25 of the members of the group. Everyone did it. They changed

1 over to another encrypted application so they could try and
2 drop any federal mole that they might have within their group.
3 And they actually specifically said, "The good thing about this
4 particular application is that if the feds get in here, you can
5 delete it right away so you can't see what we've been talking
6 about."

7 And I submit to the Court that if they were just
8 playing paintball in the woods and having fun and weren't up to
9 anything wrong, they wouldn't need to take all those steps for
10 operational security.

11 Now, when we get to the overt acts beyond that, it
12 starts getting more serious. When we go back to August 29th,
13 Mr. Fox and another individual who we have now named,
14 Mr. Molitor, and the confidential informant all went to do a
15 surveillance of the governor's house. They were the only ones
16 who participated the first time, but we saw the pictures. They
17 drove right up to the house, looked at it from the other side
18 of the lake, and tried to figure out whether it would be a
19 feasible target. And again, they had other ideas like storming
20 the Capitol, but the fact that those things didn't happen
21 doesn't mean that none of this was ever going to happen. Those
22 were ideas they threw around, and some of them were discarded
23 as not feasible. And as common sense would tell you, storming
24 the Capitol with this small handful of people is not feasible.
25 There's police everywhere and you would never get away with it.

1 So as we saw in the text messages, they focused specifically on
2 something that was feasible, trying to attack the governor's
3 house in a remote part of Northern Michigan where as they said
4 the nearest police department was minutes away on the other
5 side of a bridge. And besides that it would be 20 minutes
6 at least to anything else like a Michigan State Police post.
7 So they focused on what was feasible, and that's what they
8 continued forward with.

9 Right after that surveillance Mr. Fox sent out
10 pictures, which we saw in evidence yesterday -- or we saw in
11 evidence back on Tuesday of his surveillance of the house. And
12 then they had a discussion about the bridge. And we saw that
13 text message just a couple of minutes ago during -- during
14 Mr. Springstead's examination of the agent. And we saw that
15 Mr. Garbin himself said, "If you take that" -- he may have had
16 the idea suggested, but he said -- and nobody made him do it --
17 he said, "If you take that bridge down, it will stop the wave".

18 You can try and construe that as meaning something
19 else, but obviously these people all knew what that meant
20 because when they next went up there to surveil the governor's
21 vacation home, Adam Fox went under that bridge. And we saw the
22 pictures of him going under there to look for a place where he
23 could put the explosives. So they were definitely taking it
24 seriously.

25 And then they started taking it more seriously the

1 next time they went around. So they didn't just surveil once
2 but twice, and the next time a whole lot more of them were
3 involved. So now we're up to September 12th and 13th when they
4 did a nighttime surveillance of the governor's house.

5 And again back to this theme that maybe they were
6 having fun shooting guns in the woods, playing paintball,
7 you're crossing a pretty serious line when you go in the middle
8 of the night in multiple cars and stage up at a gas station and
9 decide who is going to have what part of the mission and you go
10 to the house of the sitting governor of the state to go surveil
11 her house at night.

12 And they knew they were doing something wrong because
13 one of the cars was video recording it for their own use. And
14 the most important thing on the mind of Mr. Higgins, who was
15 just arrested yesterday apparently, was destroying that
16 evidence. If they were just playing games and they were just
17 having fun and doing nothing wrong, you wouldn't want to be
18 destroying the evidence that you were ever there at the
19 governor's house. So they knew it was a sinister thing and how
20 it was going to look.

21 All of them wanted to keep a low profile. And I
22 think that was important when we see what their intention was.
23 That brings us to the message they had about being invited by
24 Mr. Musico. And I think some attention was drawn to the fact
25 that Mr. Musico wasn't charged. Mr. Musico obviously was

1 trying to make a big statement by being out in front of the
2 Capitol, and we saw that text message string on the encrypted
3 chat where he, who they referred to as Grandpa, said, "Let's
4 have an armed demonstration in front of the Capitol" like they
5 had been doing before. And these individuals said, "No way."
6 Adam Fox posed it to all of the rest of them and said, "Who is
7 up for doing this?" And they all said, "No way. We have to
8 keep a low profile." And I believe the exact words were
9 something along the lines of -- for Mr. Garbin where "We have
10 to have zero and I mean zero public interaction with him if we
11 want to follow through with our plans." Why would you say zero
12 public interaction if the reason why you were doing this was
13 not just fun but it was political and you wanted to make a
14 statement? Why would you say "We want to have zero interaction
15 with the people who are being noticed by the media, who are
16 going to see our faces, and we are going to be seen involved
17 with this." They wanted to keep a low profile. And they say
18 "If we want to follow through with our plans." So obviously
19 they had some plans not just to get back together again and
20 have a potluck like somebody was saying and shoot at targets in
21 the woods.

22 Finally, they were arrested all coming to buy -- to
23 give money for more gear. I think the totality of the
24 circumstances here is what tells us what was going on. I
25 understand that defense counsel want to try and pick it apart

1 and say that this was fine, that was fine. And it's right,
2 there's nothing wrong with training for medical situations or
3 how to shoot guns. There's nothing wrong with talking over
4 encrypted applications. People do that for all kinds of
5 reasons, I suppose. There's nothing wrong with being upset
6 with your government or your governor. There are people who
7 protest with signs out in front of the Capitol. That's okay.
8 There's nothing wrong with driving around at night. There's
9 nothing wrong with having night-vision goggles, I suppose, or
10 silencers if they are legal and you've paid the tax stamps.
11 But when you put all those things together, you have a
12 different picture.

13 And I was trying to bring it up yesterday during
14 questioning, but I think it's more appropriate to make the
15 analogy here in argument, you can analogize this to something
16 like a bank robbery or a burglary. If you're planning to
17 burgle somebody's house, you can say there's nothing wrong with
18 having ski masks. It's perfectly legal. Lots of people have
19 them. And there's nothing wrong with driving around on a
20 public street. But if you say that you are interested in
21 burglarizing somebody's house and you get ski masks and you
22 drive by their house in the middle of the night casing it out
23 once, maybe twice, then it starts to paint a picture that you
24 may really intend to burglarize that house, which is I think
25 what we have here.

1 If they weren't serious about doing this, they
2 wouldn't have freaked out about having feds in their presence.
3 They wouldn't have been saying, like Mr. Garbin did, "We should
4 have zero and I mean zero public interaction with the public
5 where they are going to see what we're up to." And you
6 wouldn't, I think most importantly, have a couple of other
7 people who actually did withdraw. We heard a lot of discussion
8 about, "Well, you don't know that my client didn't withdraw,"
9 but you know what, we know that at least two people said they
10 wanted nothing to do with this. And I think if all they were
11 doing was something recreational in the forest, you wouldn't
12 have people saying "I don't want to go to jail over that."

13 *THE COURT:* Ms. Nieuwenhuis.

14 *MS. NIEUWENHUIS:* Your Honor, we are objecting
15 without argument at this time.

16 *THE COURT:* All right. Thank you.

17 You're next, Mr. Springstead.

18 *MR. SPRINGSTEAD:* Mr. Satawa is going to handle the
19 arguments.

20 *THE COURT:* All right.

21 *MR. SATAWA:* Good afternoon, Your Honor. And
22 congratulations.

23 *THE COURT:* Good afternoon.

24 *MR. SATAWA:* Your Honor -- Your Honor, if it pleases
25 this Honorable Court, I note that the government made its

1 bond-over argument and stated that, you know, "We presented a
2 bunch of evidence about firearms and other things, but the
3 charge is kidnapping." It is interesting and question --
4 raises an interesting question as to if the charge is
5 kidnapping, why was so much, in fact a significant part of the
6 government's case, focused on whether or not somebody had a
7 firearm or a silencer, whether a rifle was too short or whether
8 it was a pistol, pictures of individuals playing army in the
9 woods?

10 Your Honor, I think that the probable-cause standard
11 at this point -- the government chose the charges, the
12 government chose to charge conspiracy to commit kidnapping.
13 That is the government's prerogative. And it's interesting
14 that when -- when the charges are chosen, we are, as defense
15 lawyers and on behalf of Mr. Garbin, our task is to answer
16 those charges.

17 The government could have charged weapons violations
18 or seditious conspiracy or other offenses. But now that we're
19 talking about bindover the only offense that's in front of the
20 Court is conspiracy to commit kidnapping.

21 So the first question that responds to the government
22 talking about the elements involved is when did this conspiracy
23 begin? And do we have evidence as to when a formal conspiracy
24 began on behalf of Mr. Garbin? After that conspiracy began
25 when did Mr. Garbin join that conspiracy? And in fact if he

1 ever did join it -- and I would submit that he did not -- did
2 Mr. Garbin abandon that conspiracy?

3 I will remind the Court in response to
4 Mr. Springstead's questioning of the agent, it is now
5 un rebutted that Mr. -- that Mr. Garbin stated "We're not
6 kidnapping anyone" I believe at the September 13th meeting.

7 If in fact a conspiracy was reached -- and I'm not
8 sure there was -- and if in fact Mr. Garbin joined that
9 conspiracy, did in fact that statement not only just express a
10 criticism or a lack of criminal intent to be a member or to
11 join that conspiracy but did it also possibly suggest that he
12 was not -- that he was abandoning it if in fact he was ever in
13 it to begin with?

14 Your Honor, I think that when we talk about the
15 charges here today it's important to remember that, as I was
16 saying earlier, in charging conspiracy to commit kidnapping and
17 yet bringing all this other information into the fold, the
18 government is bringing a case that does involve the
19 First Amendment freedom of speech and of association and of
20 assembly. The government is bringing a case that is talking
21 about the Second Amendment right to possess firearms.

22 When there is black-letter law, black-letter
23 conspiracy law that when conspiracies touch on those things,
24 the government -- that this Court's function and inquiry is
25 raised to a higher level. In order to sustain a conviction for

1 conspiracy, the government must prove each defendant agreed to
2 violate the law, possessed the knowledge and intent to join the
3 conspiracy and participated in that conspiracy. That's
4 United States v. Silvo [sic], S-I-L-V-O, 620 F.3d. 630 (2010).
5

6 Your Honor, Pinkerton, of course, of which this Court
7 is well familiar, went on to state that -- hold criminal
8 conspiracy requires an object to be accomplished, a plan or
9 scheme embodying a means to accomplish that object, the
10 agreement by two or more defendants to accomplish that object,
11 and an overt act when applicable.

12 One of the requisite elements the government must
13 show in a conspiracy case is that the alleged conspirators
14 shared a unity of purpose. The intent to achieve a common goal
15 and an agreement to work together towards that goal in absence
16 of evidence of these essential factors, a conspiracy charge
17 cannot be sustained. That's United States v. Lee, a
18 Sixth Circuit case from 1993. 991 F.2d. 343.

19 Most importantly in this case is that when a
20 conspiracy implements -- implicates -- I apologize,
21 Your Honor -- when a conspiracy implicates First Amendment
22 protections such as freedom of association and freedom of
23 speech, the court must make specially meticulous inquiry into
24 the government's evidence so that there is not an unfair
25 imputation of the intent or acts of some participants to all

1 others. United States v. Dellinger, 472 F.2d. 340,
2 Seventh Circuit (1972). "A defendant cannot be convicted of a
3 conspiracy merely on the grounds of guilt by association and
4 mere association with the members of the conspiracy without the
5 intention and agreement to accomplish an illegal objective is
6 not sufficient to make an individual a conspirator." Lee at
7 348. "Mere presence at a scene does not establish
8 participation in a conspiracy." United States v. Paige,
9 470 F.3d. 603, Sixth Circuit (2006).

10 Your Honor, I would submit as it relates to
11 Mr. Garbin that that is all the government has done there,
12 which is to show that he was a participant. The government has
13 made a bindover argument stating that they took steps towards
14 actually kidnapping the governor. And he talked about the
15 steps that he alleged the conspirators in the conspiracy in
16 this case made. There has been no evidence submitted in this
17 record that Mr. Garbin did those things, that he embraced the
18 goals of the conspiracy, that he agreed to the goals of that
19 conspiracy, and that he went on to support the goals of that
20 conspiracy in so doing.

21 Your Honor, I think it's important for things like
22 the chats that the government makes such a big deal about that
23 Mr. -- in response to Mr. Springstead's questioning the chat
24 attributed to Mr. Garbin was in response -- it was in response
25 to the confidential informant basically saying the same thing

1 and Mr. Garbin parroting it back.

2 The government makes an argument that at the 9-12
3 into 9-13 nighttime surveillance the conspirators had to decide
4 who was going to do what and who was going to do what part of
5 the mission. Your Honor, that's evidence that simply doesn't
6 exist, at least -- and again we understand that it's a
7 preliminary examination, and we understand that hearsay upon
8 hearsay is allowed, and that the case agent -- it's not humanly
9 possible for him to have reviewed the hundreds if not thousands
10 of hours of tapes that exist in this case, but just because
11 three different cars went somewhere, and the case agent is not
12 familiar as to what Mr. Garbin's car did before then, whether
13 or not it went to dinner in Big Rapids, whether or not they ate
14 at the Holiday Inn, what exactly was told to Mr. Garbin before
15 he went on this drive, whether or not Mr. Garbin was told what
16 was going to be happening. According to the case agent the car
17 that Mr. Garbin is in's task was to flash headlights. Again,
18 Your Honor, without more -- and we understand that the burden
19 is relatively low at this point -- but without more does the
20 testimony provided by the case agent and the argument provided
21 by the government overcome the specially meticulous inquiry
22 that the -- that Dellinger requires in a case that does
23 implicate the First Amendment -- the First Amendment
24 association, assembly, and free speech rights.

25 Your Honor, Mr. Garbin showing up, participating, is

1 not by itself, without more, evidence that he agreed, that he
2 agreed to the conspiracy, if we even have enough evidence that
3 one was formed, and if we have one, even if it was formed, that
4 Mr. Garbin knowingly and voluntarily entered into. We would
5 ask the Court to not bind over as to Mr. Garbin. Thank you.

6 *THE COURT:* Thank you, Mr. Satawa.

7 Mr. Graham.

8 *MR. GRAHAM:* Your Honor, a few simple points. I know
9 the Court is well aware of the standard, we all are, to be
10 applied here. It does remain the government's burden no matter
11 what.

12 We don't think that a conspiracy has been established
13 by any standard of proof. If there was actually a conspiracy
14 as opposed to some loose talk, then what really was the
15 conspiracy? Was it a conspiracy to take the governor and set
16 her adrift in the middle of the lake? Was it a conspiracy to
17 take her and then -- again, the government urges us to apply
18 common sense and I agree with that. Common sense looks at this
19 "A kidnapping of the governor?" And then people apparently --
20 well, we didn't hear anything about a real plan that would
21 cause someone to do something in the face of what
22 undoubtedly -- again common sense -- be the largest manhunt in
23 the history of the state. What was going to happen? It's
24 loose talk.

25 And again, the point is: What has been done to show

1 you that there was an actual, actual agreement? And I would go
2 back to a fact, to an actual fact as opposed to speculation
3 that all of the attorneys are prone to make.

4 In the transcript of proceedings from Tuesday at
5 page 62, line 13, there is a statement that when Mr. Fox was
6 arrested he made a statement and he talked about his plan.
7 That's a quote. Well, that doesn't show that Mr. Fox is guilty
8 of a conspiracy. And it certainly doesn't show that anyone
9 else is. If Mr. Fox -- if he said that -- and again, who
10 knows -- and I'm not -- I am not impugning the agent in terms
11 of saying he was told that, it's not that at all -- but we get
12 into questions of reliability when we're dealing with fifthhand
13 hearsay. But his plan, his plan would not be a conspiracy. He
14 would not be guilty of conspiracy and most certainly no one
15 else would.

16 So in some ways -- I understand the seriousness of
17 this charge. It is incredibly serious. I understand that.
18 But they still have to produce some evidence that causes you
19 when you evaluate and all of us when we apply common sense to
20 think "Really? Was there really an agreement here? Or is it
21 just loose talk?"

22 It could be loose talk, it could be dangerous talk,
23 but was there really an agreement? And if so, what exactly was
24 the agreement? Because I have no idea right now.

25 Now, the government says that, you know, in the

1 course of these proceedings that we've digressed a bit. Well,
2 the reason we've digressed from the question of kidnapping is
3 because the government says there are certain things that show
4 that there was going to be a kidnapping and that has to do with
5 training, weapons, explosives. You know, the whole point about
6 explosives -- and at various times the government said this is
7 not a case about explosives -- well, it is, because that was a
8 key component to their alleged, I guess, what the government
9 believes is the conspiracy here.

10 And what we do know about the allegation of
11 explosives is we've got nothing that goes beyond some enhanced
12 firecrackers. We've got talk about \$4,000 for explosives that
13 would be used on the bridge, but what's the evidence before you
14 about what happened to follow up? When in fact the arrests
15 were made at this meeting where there's apparently -- I don't
16 know if it's going to be a purchase or the \$4,000 will be
17 delivered -- what is the evidence before you about how much
18 money was there? The evidence is \$275.

19 So every -- the reason we've tried to pick this apart
20 is because this overriding, I think -- this overriding
21 allegation of a conspiracy has got -- is so outlandish, it's
22 got to be made up of actual facts. And when you look at those
23 facts, they don't make sense. They don't make sense under any
24 standard of proof.

25 We certainly know that in regard to Mr. Franks

1 that -- we certainly know that -- and it's undisputed -- that
2 at some point early on he says he is opposed to a forced
3 kidnapping or to the concept of forced kidnapping. The
4 government argues that he -- I think would argue that he goes
5 beyond that by his actions after.

6 Well, where -- where do those actions actually --
7 whatever you find that those things are, those actions are, how
8 do they -- how do they actually tie in with an agreement? How
9 do they tie in with an agreement? And again, if there was an
10 agreement, what exactly was that agreement? Was the agreement
11 to cast her adrift in the lake? Was the agreement to take her
12 and move her to another location? Or is the government's
13 position that there simply was an agreement "I guess we're
14 going to kidnap her and leave her in the car somewhere." I
15 don't know. I just have no idea. That's how absurd the whole
16 thing is.

17 So from our perspective we believe that the evidence
18 has not established by any standard of proof that there was a
19 conspiracy here, and certainly -- and certainly don't believe
20 that Mr. Franks is tied to any conspiracy, and so we'd ask you
21 to reject the government's motion for a bindover. Thank you.

22 *THE COURT:* Thank you.

23 Mr. Douglas.

24 *MR. DOUGLAS:* Your Honor, we'll continue to object
25 but not argue. I think the issues are before you.

1 *THE COURT:* Thank you, Mr. Douglas.

2 Mr. Hills.

3 *MR. HILLS:* Thank you, Your Honor. As this Court
4 knows, this Court has to make an individualized assessment, and
5 it becomes a difficult job in my estimation when you've got
6 several defendants and throughout the course of the testimony
7 it's they did this and they did that. But "they" weren't
8 always there. They weren't always present as a group in a
9 whole.

10 And I'll give you an example. Mr. Kessler indicated
11 on October 7th they were all there and they were all going to
12 contribute money for these explosives. Well, Mr. Caserta was
13 not there. He was at work. So that's just one example.

14 And when I go back and look for my client with what
15 he participated in, he started June 28th in Munith, and I think
16 that's when that video was there, so he was not doing anything
17 illegal. He was participating in a group. And I think that
18 throughout all of them I think the agent testified that there
19 were multiple people there, anywhere from 30 to 50 or so, and
20 doing legal things, training in different areas. So that's
21 what my client was doing at that location. And because
22 somebody says "Okay, we're going to have this agreement, and if
23 you don't agree with it, you have to leave," well, people came
24 there to do a certain thing, to train, and they are training,
25 as my client was.

1 The same thing with Wisconsin. On June I think it
2 was -- July 10th through 12th, at that location, again multiple
3 people there, my client is training, no allegation that my
4 client did anything there. There was, I think, an attempted
5 explosion there. I think that was the BB thing. My client had
6 nothing to do with that. There's no evidence of anything
7 there.

8 There was a meeting at Lake Orion. There was nothing
9 there. My client made a few statements, but these are general
10 statements, not anything specific. And I'll get back to that
11 regarding the First Amendment and freedom of speech and
12 assembly.

13 But moving forward to Luther in September, again, my
14 client is there. There are multiple people there. I'll just
15 go with 30 to 50 people. But it's an FTX training exercise
16 event. And that's what my client was doing there. There were
17 these two surveillance operations apparently that were
18 testified to, and again they didn't do it. My client didn't do
19 it. My client wasn't a part of the first surveillance. My
20 client wasn't a part of the second surveillance. And
21 apparently there's jobs that are being done as a part of this
22 mission. You can't tell me here right now what my client's
23 alleged job was for this alleged conspiracy. Was he a driver?
24 A shooter? A grabber? A lookout? You don't know. You don't
25 have that information because he wasn't involved in it. That

1 information wasn't provided because it doesn't exist.

2 When you go through, my client wasn't a part of any
3 militia. He wasn't a part of the surveillance. He was not
4 part of the explosions. He was not part of the IEDs. He was
5 not part of any cupcake or baker or cake talk. He wasn't part
6 of drawing a map or detail. I already discussed that he wasn't
7 involved in any sort of plan. He didn't go to any rally. He
8 didn't contribute any money. No dues to anything. And I
9 would -- all we have -- and the Court didn't like my client's
10 statement yesterday. I might not have liked it either. On
11 Wednesday. All right? But it doesn't have anything to do with
12 kidnapping the governor of the State of Michigan.

13 I would reiterate Mr. Satawa's recitation of
14 Dellinger, Paige, and I believe Lee regarding where these
15 statements run head-long into the First Amendment, freedom of
16 speech and freedom of assembly. So that's what you have with
17 my client. You have him assembling and doing these things that
18 are perfectly legal, and you've got some other statements that
19 maybe it's inflammatory rhetoric, I'll give you that, but it's
20 perfectly legal. We might not like it. The Court might use it
21 to detain my client. But it doesn't have anything to do with
22 kidnapping the governor or a conspiracy to kidnap the governor.

23 And Exhibit 10, I don't think my client was even
24 alleged to have been a part of that text string that the
25 government talked about. So I would ask the Court to deny

1 bindover. Thank you.

2 *THE COURT:* Thank you, Mr. Hills.

3 Mr. Kessler, I'll give you the last word. I do have
4 one question for you.

5 *MR. KESSLER:* Yes, Your Honor.

6 *THE COURT:* In connection with the conspiracy charge,
7 because it requires -- what the statute says is "If two or more
8 persons conspire to violate this section and then one or more
9 persons do an overt act to effect the object of the conspiracy,
10 each will be punished by imprisonment," yadda, yadda.

11 In violating this section, which of the provisions
12 above are you relying on? (a)(1)? 1201(a)(1)?

13 *MR. KESSLER:* I'll have to pull it out.

14 *THE COURT:* I guess my question, without reference to
15 the statute, is do you need to show probable cause that the
16 object of the conspiracy was to take her across state lines in
17 order to support the conspiracy charge in this case?

18 *MR. KESSLER:* We do not, Your Honor. It's sufficient
19 that they used a means or instrumentality of interstate
20 commerce. And they used the internet, cell phones, and various
21 things like that to further the purpose.

22 *THE COURT:* All right. Thank you.

23 Did you wish to argue further in rebuttal?

24 *MR. KESSLER:* Yes, Your Honor. I just want to
25 address a couple of things that counsel said.

1 We did have two statements, one from Mr. Garbin and
2 one from Mr. Franks, that all alone and taken out of context
3 might imply that they weren't interested in it. For example, I
4 think they highlighted on behalf of Mr. Garbin saying "We're
5 not here to kidnap anybody." But as the Court will recall,
6 that was in the context of a conversation when they had just
7 gotten back from casing her house and they were all laughing
8 and the responses were "No, no children, we're adult napping."

9 So, if anything, it just shows their callousness
10 towards the seriousness of the whole thing. Mr. Franks may
11 have said he was opposed to kidnapping at some point long
12 before that, but then unlike Mr. Higgins and Mr. Molitor who
13 said, "I don't want to go to jail" or "I want no part of that,"
14 they stuck around and they continued doing things in
15 furtherance of this purpose.

16 I do want to address, since two counsel had brought
17 it up, the notion that this case involves the First or
18 Second Amendment rights at all. And I think that's a complete
19 red herring that this Court should disregard.

20 The idea that this implicates freedom of speech is,
21 frankly, absurd in this case when you have all their
22 communications going on on encrypted chats that no one else can
23 see. So the idea that that's somehow protected speech, it
24 doesn't make a whole lot of sense. Their whole purpose was to
25 keep anyone from hearing what they were saying. And they are

1 not being charged with saying anything that's against the law.

2 The idea that freedom of assembly should protect them
3 is also kind of silly. If all they were doing was assembling
4 to have FTXs with no ulterior motive, maybe that would be an
5 issue. But that's not what we have here. And you certainly
6 can't claim when you all get together to rob a bank or commit
7 some other crime that somehow that implicates your
8 First Amendment to assemble freely.

9 The same thing goes for the Second Amendment. They
10 are not being charged with firearms offenses, so the fact that
11 they had firearms as tools of the crime that they were
12 intending to commit does not implicate the Second Amendment,
13 any more than it does when somebody brings a gun to a
14 conspiracy to rob a bank. That's not
15 Second Amendment-protected and it doesn't require any
16 heightened scrutiny by the Court.

17 The idea that these folks didn't embrace the
18 conspiracy, I think, you know, you could point to a number of
19 things, but the one that obviously jumps out is if you are not
20 onboard with this plan, you don't case the governor's house at
21 night. There's just no innocent explanation for why you do
22 that.

23 Now, Mr. Graham made a point that, as to his client,
24 he's not involved because Mr. Fox had said at one point that it
25 was his plan. Every plan starts with somebody, and I don't

1 dispute that the evidence seems to suggest that the plan
2 originated with Mr. Fox. But just because Mr. Fox came up with
3 the plan doesn't mean the other people aren't -- are absolved
4 of guilt if they follow his plan.

5 As to Mr. Caserta, Mr. Hills is not incorrect that
6 his client appears to be less involved than some of the other
7 defendants, but less involved is not the same thing as not
8 involved. Unlike some of the other people we've heard about,
9 he was there for conversations where they talked about
10 kidnapping and he stuck around and continued with the plot.

11 And I understand -- Mr. Hills was saying "What was
12 his job? Was he a grabber? Was he a looker?" Well, yeah, in
13 Exhibit 20 they discussed training for asset extraction, which
14 can really only in common sense be read one way. They had been
15 talking about taking the governor out of her house, and he was
16 enthusiastic about the idea of training for asset extraction.
17 That would make him a grabber in the terms we just heard.

18 It was asked was he a looker. In Exhibit 29, among
19 all the inflammatory language, I think one word jumps out. He
20 didn't just say "We should kill cops wherever we find them."
21 He said, "We should kill cops if we run into them on a recon."
22 As the agent testified, that means a reconnaissance or planning
23 for a mission. If he's not doing a recon, then what is he
24 talking about at this point?

25 So just to sum up, I think we heard what is a

1 reasonable question from a lot of these people. Was it a good
2 plan? Had they thought it through? As Mr. Graham was saying,
3 did they think through what they would do after they took the
4 governor? No, it doesn't look like they did. It looks like
5 they might have disagreed or not discussed it much. One person
6 saying leave her out on a boat in the middle of the lake, other
7 people not really talking about what to do at all. It doesn't
8 have to be a good plan to be dangerous. These people got
9 caught because they are amateurs and they hadn't thought things
10 through. That doesn't mean it wasn't dangerous, Your Honor.

11 *THE COURT:* Thank you, Mr. Kessler.

12 All right. The question before me in a preliminary
13 hearing is whether there's probable cause, not proof beyond a
14 reasonable doubt, to support the charge. Nonetheless, it's the
15 government's burden to provide that evidence.

16 Under 18 U.S.C. 1201(c) the government must prove
17 that two or more persons conspired or agreed to commit
18 kidnapping as defined in 18 U.S.C. 1201. And that one or more
19 of such persons did any overt act to effect the object of the
20 conspiracy.

21 The evidence that has been presented in this case
22 shows a series of events as laid out in the Complaint, which
23 was incorporated into Special Agent Trask's testimony, during
24 which the defendants trained and planned for an operation in
25 which they intended to kidnap Governor Gretchen Whitmer. They

1 had discussions by electronic messaging and voice-to-voice and
2 in person about how to accomplish their plans. And there's
3 also evidence that members of the conspiracy undertook overt
4 acts toward accomplishing that plan.

5 Various counsel take issue with each of the events
6 that took place and what those show, but on a probable-cause
7 standard, as I'll explain, there is sufficient evidence to
8 support the charge.

9 With regard to Mr. Fox, the evidence set out in the
10 Complaint and in Special Agent Trask's testimony is that he
11 coordinated and planned the kidnapping and agreed with his
12 codefendants to kidnap the governor. As much as the AUSA
13 summarized in his argument. There is certainly sufficient
14 evidence of probable cause to support the charge against
15 Mr. Fox.

16 Likewise, with Mr. Garbin there is ample evidence
17 that he intended to join the conspiracy to kidnap
18 Governor Whitmer. And just to recap a small portion of that
19 testimony from the later stages of planning, you have the
20 September 12 and 13 FTX at Garbin's property in Luther which
21 Mr. Fox, Mr. Croft, Mr. Garbin, Mr. Franks, and Mr. Caserta all
22 attend. That's the event at which Mr. Croft constructs an IED
23 and detonates it. At that exercise Mr. Fox takes Mr. Croft,
24 Garbin, Franks, and Caserta and others aside to brief them on
25 the plot. And he selects Croft, Garbin, and Franks to conduct

1 a nighttime surveillance. As we know, Harris and Caserta
2 remained at the camp.

3 The evidence regarding that surveillance demonstrates
4 that the group was focused on Governor Whitmer and her
5 property. That they filmed it. That at least one person who
6 was involved in that surveillance was very concerned about the
7 destruction of that video.

8 On September 13 the group again meets and confirms
9 that this is the group that's going to kidnap Governor Whitmer.
10 And they agreed to conduct a final training exercise in
11 late-October setting up a timeline for this event.

12 On September 14 in an encrypted chat Mr. Fox states
13 that he doesn't want that exercise to be the last week of
14 October because it's not enough time before the national
15 election. And the group discusses using the time to raise
16 money for explosives and other supplies.

17 On September 17 in an encrypted group chat Fox,
18 Garbin, Franks, Harris, Caserta, and others are involved and
19 there's discussion of the invitation to participate in an armed
20 protest at the Capitol. And specifically Mr. Garbin is against
21 public exposure, as they all are. And he references the
22 ability to continue with their plans and that avoiding public
23 exposure is important to continuing with their plans.

24 On October 7 Mr. Fox, Mr. Garbin, Mr. Harris, and
25 Mr. Franks plan to meet with the UCE to make a payment on

1 explosives and tactical gear. Again, there are questions about
2 exactly how that plays out and exactly what they were buying,
3 but it is the series of events and continuing building toward a
4 plan that is important here.

5 And I do intend this to be individualized. I'm
6 focused just now on Mr. Garbin. And as I said, counsel takes
7 issue with what each of these events show, but again on
8 probable cause there is sufficient evidence to support the
9 charge because of the repetition of the group's activities and
10 the building of the preparation toward the goal.

11 It appears from the government's evidence that the
12 group had coalesced around a plan to kidnap Governor Whitmer
13 and was preparing for that event. In other words, there's
14 probable cause that the conspirators, as Mr. Satawa points out,
15 shared a unity of purpose, at least in that regard. And
16 there's more than mere presence and association in evidence
17 here.

18 Counsel argues -- counsel argue that there was no
19 evidence of the specific agreement here or that this was just
20 loose talk. The government isn't required to show that the
21 conspirators signed on a dotted line and had a multipage
22 five-step plan for exactly how it was going to go. Instead
23 they are required to show a unity of purpose. And again the
24 steady work towards this plan to kidnap the governor is ample
25 evidence of the probable cause to commit kidnapping.

1 Counsel isn't wrong that there is a lot of discussion
2 about various scenarios, but again, the plan seems to be
3 building through -- that is being built through these overt
4 acts seems to be, at its face, the plan to kidnap the governor
5 from her home in Northern Michigan and to take her elsewhere.
6 The fact that that was likely to be unsuccessful or difficult
7 to accomplish is not particularly relevant as to whether or not
8 the group intended to make that plan.

9 So that's a short recitation of some of the facts
10 that support probable cause. Sufficient facts to support
11 probable cause. And those same facts support a finding of
12 probable cause as to Kaleb Franks, Daniel Harris, and
13 Brandon Caserta. I laid out the evidence supporting probable
14 cause in more detail during their bond hearings, and I
15 incorporate into my ruling here that reference.

16 Of those three Mr. Hills makes a good argument that
17 only Mr. Caserta was not involved either in the surveillance of
18 the governor's vacation home or with an attempt to purchase
19 explosives from what turned out to be an undercover agent.
20 Nonetheless, at least on a probable cause standard there is
21 sufficient evidence as to Mr. Caserta in that he was present
22 and involved in the planning discussions and appears to have
23 agreed on the objective of the group by continuing to be
24 involved in it.

25 But I don't rest on mere association.

1 Government Exhibit 19 demonstrates his involvement in strategy.
2 He didn't want to engage in protests where the engagement would
3 jeopardize the scheme. In Government Exhibit 20 the group is
4 discussing the scheme and his participation references "When
5 the time comes." So he appears to also be agreeing that this
6 plot should go forward.

7 He is also, as Mr. Kessler points out, enthusiastic
8 regarding training for acquiring an asset and detaining for
9 extraction. In addition, the evidence in Exhibit 29 that he
10 believes the group has to be prepared to kill cops if we run
11 into them on a recon adds to the evidence that would support
12 at least probable cause that he committed the crime of
13 conspiracy to commit kidnapping. So that is sufficient in
14 Mr. Caserta's case as well to demonstrate probable cause of his
15 intent in joining the conspiracy.

16 In summary, there is evidence sufficient to support
17 probable cause that the defendants charged agreed to kidnap
18 Governor Whitmer, and there is evidence that at least one
19 individual and in fact there's evidence that most of the
20 individuals in the group engaged in an overt act in furtherance
21 of that conspiracy. At a minimum the surveillance of the
22 governor's house satisfies that requirement.

23 Therefore, I find that there is probable cause as to
24 each defendant to support the charge and will bind the
25 defendants over for proceedings before the grand jury.

1 That concludes the preliminary hearing, and we'll
2 adjourn at this point. It's about 12:47. Let's be back on the
3 record at 1:30 where we can conduct bond hearings. Let's start
4 with Mr. Fox.

5 **THE CLERK:** All rise, please. Court is in recess.

6 *(Recess taken at 12:48 p.m.)*

7 * * * * *

8 I certify that the foregoing is a correct transcript
9 from the record of proceedings in the above-entitled matter.

10 I further certify that the transcript fees and format
11 comply with those prescribed by the court and the Judicial
12 Conference of the United States.

13
14 Date: October 21, 2020

15
16 **/s/ Glenda Trexler**

17 Glenda Trexler, CSR-1436, RPR, CRR
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